* **10-7E-3, [Conflicts]**
  + **Local ordinances' conflict provision.**
    - A § 10 local labor ordinance's conflicts provision violates PEBA by providing that the local labor ordinance shall not supersede previously enacted local legislation. *AFSCME and Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No. 3 (Dec. 20. 1994).
    - Sandoval Regional Medical Center, a nonprofit “research park corporation”, petitioned to be certified and was opposed by the Union who argued that SRMC was a nonprofit “research park corporation” created pursuant to the New Mexico URPEDA and the URPEDA expressly provides that for personnel matters, research park corporations shall not be deemed a “public employer”. SRMC argued that it did not fall within the scope of PEBA and the PELRB does not have jurisdiction over it with respect to the Petition therein or other collective-bargaining and labor relations matters. The Hearing Officer concluded, “that both SRMC and its regular non-probationary employees are covered by the New Mexico Public Employee Bargaining Act is supported by PELRB precedent that the definition of “public employer” must be read in conjunction with the description of “appropriate governing body” in NMSA 1978, § 10-7E-7 (2003).” *See UHPNM-AFT and UNM Sandoval Reg. Med. Center, Inc.*, PELRB 306-21.
* **10-7E-4(G), [Definitions-Confidential Employee]**
  + **Confidential employee**
    - PEBA’s exclusion of “confidential employees” from collective bargaining concerns those employees whose work duties are related to the formulation, determination and effectuation of a public employer's employment, collective bargaining, or labor relations activities. CWA Local 7076 and Worker's Compensation Administration, 5-PELRB-09 (April 6, 2009).
    - The exclusion of confidential employees is limited to those employees who assist and act in a confidential capacity to persons exercising managerial functions in the field of labor relations. NEA and Jemez Valley Public Schools, 1 PELRB No.10 (May 19, 1995).
    - PEBA's confidential employee definition requires an analysis of (1) the duties of the employee in question and (2) the duties of the person he or she allegedly assists. NEA and Jemez Valley Public Schools, 1 PELRB No.10 (May 19, 1995).
    - Where the employer has not engaged in collective bargaining in the past, the Board will utilize a reasonable expectation test for analyzing confidential status. Under such a test, analysis of the roles of the employer and his or her supervisor in collective bargaining will be based on their current duties and a reasonable expectation of whether the employee in question will be performing confidential duties within the meaning of the Act in the future. NEA and Jemez Valley Public Schools. 1 PELRB No. 10 (May 19, 1995).
    - In Santa Fe Community College-AAUP and Santa Fe Community College, 4-PELRB-2017 (PELRB No. 311-16) the Santa Fe Community College chapter of the American Association of University Professors filed a Petition for initial certification of a bargaining unit comprising all full-time faculty members including Department Chairs and Program Directors. The Community College objected to including Department Chairs and Program Directors because (1) they share no community of interest with faculty; (2) are supervisors, NMSA 1978, § 10-7E-4(U) (2020); and (3), are management employees. NMSA 1978, § 10-7E-4(N) (2020). A further dispute existed concerning whether employees who have not completed SFCC's multi-year probationary periods and temporary employees would be eligible to vote in a representation election. The Hearing Officer determined that the Chairs and Directors met the statutory definition of managers and are excluded from the bargaining unit pursuant to §§ 10-7E-4(N) and 10-7E-5. The union sought review of the Hearing Officer's determination regarding the excluded employees. The PELRB certified the bargaining unit for non-chair and non-director faculty and remanded back to the Hearing Officer the question of which chairs and directors fall within the PEBA’s definitions of management and supervisory employees. As the parties were in the course of scheduling the hearing on remand, the Community College restructured management functions modifying the job duties of those chairs and directors who were the subject of the Board's remand. The Union filed a PPC objecting to those modifications without bargaining. (PELRB No. 114-17.) While the PPC was pending the parties reached an agreement whereby Academic Directors will not be members of the bargaining unit but will be classified as “staff employees”; neither will Academic Directors be represented by AAUP for collective bargaining. Faculty Chairs will be included in the bargaining unit with duties to be negotiated between the parties. On August 14, 2017, AFSCME withdrew the PPC as part of the settlement and a Voluntary Dismissal was entered by the Director. Cf. San Juan College v. San Juan College Labor Management Relations Board, 2011-NMCA-117, 267 P.3d 101. (Substantial evidence was found to support the local labor board’s determination that a bargaining unit of all full-time instructional professionals employed at 100% instruction, excluding those with additional administrative duties, was appropriate).
  + **Application to particular job positions**
    - A School District's Administrative Interns, or ·principals-in-training are confidential employees because they could be on a bargaining team and, by training closely with principals and other administrators and attending the monthly administrator meetings. are privy to the formulation of the district’s labor-management policies. American Federation of Teachers Local 4212 and Gadsden Independent School District, 03-PELRB-2006, PELRB Case No. 169-06 (May 31, 2006).
    - An employee that carries out her job functions almost entirely independent of anyone else, including her supervisors and whose duties do not involve handing confidential Information related to collective bargaining, does not “assist and act in a confidential capacity” as contemplated by PEBA. NEA and Jemez Valley Public Schools, 1 PELRB No. 10 (May 19, 1995).
    - A payroll employee is not confidential under PEBA where any financial information to which she has access is also available to others, NEA and Jemez Valley Public Schools, 1 PELRB No. 10 (May 19, 1995).
    - A payroll employee is not confidential under PEBA where the financial information she handles may be used by the employer for use in cost proposals, but without further input by the payroll employee in proposal formulation. NEA and Jemez Valley Public Schools, 1 PELRB No. 10 (May 19, 1995).
    - A school secretary who serves as the secretary to a school principal that is or will definitely be on the school district's negotiating team, and as such types and files documents related to labor relations matters and has access to the principals' offices, IS confidential even if she does not have substantive input in creating the documents typed or filed. NEA and Jemez Valley Public Schools, 1 PELRB No. 10 (May 19, 1995).
  + **Local ordinances' definition, (§ 26 Repealed, 2020)**
    - A § 26(B) local ordinance's definition of “confidential employee” violates PEBA where it defines such employees as "a person who assist and acts in a confidential capacity with respect to a management employee” because such definition is overbroad, does not comport with the definition of PEBA as written or as subsequently interpreted by the Board in *CWA Local 7076 and Worker’s Compensation Administration,* 5-PELRB-09 (April 6, 2009), and could exclude employees otherwise covered under PEBA. *IAFF Local* 2362 *v. City of Las Cruces,* 07-PELRB-2009 (July 6, 2009). *But See AFSCME and Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No. 3 (Dec. 20, 1994) (holding that a legislative enactment is entitled to a presumption of validity, and the absence of a PEBA proviso from a local ordinance cannot deny by implication statutory rights guaranteed under PEBA to any class of employees covered thereunder). *See also, McKinley County Federation of United School Employees, AFT Local 3313 v. Gallup-McKinley County School District and Gallup-McKinley County School District Labor Management Relations Board, 03-PELRB-2007* (undated). That case represents an instance in which the State PELRB Board imposed on local boards a requirement to follow PELRB interpretations of PEBA.
    - A § 10 local labor ordinance's definition of “confidential employee” violates PEBA where it identifies as confidential employees a broader class of employees than that defined in PEBA, such as secretaries to department heads and any person privy to confidential information concerning employee relations. *AFSCME and Los Alamos County Firefighters v. County of Los Alamos. 1 PELRB No.3* (Dec. 20, 1994).
* **10-7E-4(K), [Definitions-Labor Organization.]**
  + **Local ordinances' definition**
    - A § 10 local ordinance's definition of a labor organization as an employee organization that represents employees in collective bargaining violates PEBA because it does not protect the rights guaranteed under PEBA concerning those labor organizations that are not yet exclusive representatives. *Santa Fe County* and *AFSCME,* 1 PELRB No.1 (Nov. 18, 1993). *See also*, *AFSCME and Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No. 3 (Dec. 20, 1994).
    - Sandoval Regional Medical Center, a nonprofit “research park corporation”, petitioned to be certified and was opposed by the Union who argued that SRMC was a nonprofit “research park corporation” created pursuant to the New Mexico URPEDA and the URPEDA expressly provides that for personnel matters, research park corporations shall not be deemed a “public employer”. SRMC argued that it did not fall within the scope of PEBA and the PELRB does not have jurisdiction over it with respect to the Petition therein or other collective-bargaining and labor relations matters. The Hearing Officer concluded, “that both SRMC and its regular non-probationary employees are covered by the New Mexico Public Employee Bargaining Act is supported by PELRB precedent that the definition of “public employer” must be read in conjunction with the description of “appropriate governing body” in NMSA 1978, § 10-7E-7 (2003).” *See UHPNM-AFT and UNM Sandoval Reg. Med. Center, Inc.*, PELRB 306-21.
* **10-7E-4(N), [Definitions-Management Employee.]**
  + - PEBA’s definition of manager can be broken down into a two-part test: (1) the employee is primarily engaging in executive and management functions; and (2) he or she has responsibility for developing administering, or effectuating management policies, which requires the employee to do more than merely participate in cooperative decision-making programs on an occasional basis. *NEA and Jemez Valley Public Schools,* 1 PELRB No. 10 (May 19, 1995).
    - The first part of the Act's test-engagement in primarily executive or management functions-requires an individual to possess and exercise a level of authority and independent judgment sufficient to significantly affect the employer's purpose. The second part of the test-responsibility for developing, administering or effectuating management policies-requires an employee to either create, oversee or coordinate the means and methods for achieving policy objectives and to determine the extent to which policy objectives will be achieved. This requirement means more than mechanically directing others in the name of the employer but rather, requires an employee to have meaningful authority to carry out management policy, *NEA* and *Jemez Valley Public Schools,* 1 PELRB No. 10 (May 19, 1995).
    - Consistent with NLRB case law, "manager” unlike “confidential employee”, is read to encompass all management policies and not just those relating to labor relations, *NEA and Jemez Valley Public Schools,*1 PELRB No. 10 (May 19, 1995).
    - The key inquiry is whether the duties and responsibilities of the alleged management employees are such that these individuals should not be placed in a position requiring them to divide their loyalty between the employer and the union. *NEA and Jemez Valley Public Schools,* 1 PELRB No. 10 (May 19, 1995).
    - In *Santa Fe Community College-AAUP and Santa Fe Community College*, 4-PELRB-2017 (PELRB No. 311-16) the Santa Fe Community College chapter of the American Association of University Professors filed a Petition for initial certification of a bargaining unit comprising all full-time faculty members including Department Chairs and Program Directors.
  + **Application to particular job positions**
    - Rio Rancho police lieutenants are not managers under PEBA because: (a) their abilities to recommend policy changes and to override staffing software do not significantly affect the employer's overall purpose of law enforcement, and (b) in creating quarterly “beat plans” they do not determine the extent to which the Department's policy objectives will be achieved *NMCPSO-CWA Local 7911 and City* of *Rio Rancho Police Department,* 04-PELRB-2009 (April 6, 2009).
    - Gadsden School day care managers meet the definition of “manager” under PEBA because they have a number of job functions unique from that of other day care workers that are related to executive and management functions, and/or developing, administering, or effectuating management policies. Additionally, it is not relevant under the PEBA definition of “manager” that they spend approximately 60% of their workdays engaged in the same work as other day care employees. *American Federation of Teachers, Local 4212 and Gadsden Independent School District,* 03-PELRB-2006, PELRB Case No. 169-06 (May 31, 2006).
    - A training sergeant at the County's Detention Center is not a manager under PEBA; she is not primarily engaged in executive and management functions because, although she drafts policies, that work largely consists of the routine or perfunctory task of pirating policies from other organizations and modifying them to the Detention Center's needs and her drafts are subject to numerous levels of review and revision. Additionally, she is not engaged in developing, administering or effectuating management policies because she largely just disseminates the policies, while the Administrator and the operations sergeant are responsible for determining which policies to follow. *In re Communications Workers of America, Local 7911 and Doña Ana County,* 1 PELRB No. 16 (Jan. 2, 1996).
    - A payroll manager that simply collects and maintains information pursuant to policy, plays no role in the development of management policy, and has no discretion in the way in which she carries out policies related to the payroll is not primarily engaged in executive and management functions. *NEA and Jemez Valley Public Schools,* 1 PELRB No. 10 (May 19, 1995).
    - Although a payroll manager may carry out management polices related to payroll, she has no meaningful authority related to policy where she simply verifies financial information given to her by others: she must inform the director of finance if she makes any changes to pay as a result of an error. She lacks to authority to sign a purchase order to otherwise pledge the employer's credit; and she has no responsibilities associated with the budget. *NEA* and *Jemez Valley Public Schools,* 1 PELRB No.10 (May 19, 1995).
    - A maintenance supervisor is not a management employee if he spends almost all of his time doing actual physical maintenance, and if he does not engage in independent decision-making that broadly affects the employer's purpose. *NEA and Jemez Valley Public Schools,* 1 PELRB No. 10 (May 19, 1995). A maintenance supervisor is not a management employee where the Superintendent created the District's Maintenance Plan based on information obtained from the maintenance supervisor, but the Maintenance Plan was never shown to the maintenance supervisor. *NEA and Jemez Valley Public Schools,* 1 PELRB No. 10 (May 19, 1995).
  + **Local ordinances' definition**
    - A § 10 local ordinance's definition of management employee does not violate PEBA by substituting the word “effectuating” with the word “officiating” or by omitting PEBA's proviso that an employee shall not be deemed a management employee solely because the employee participates in cooperative decision-making programs on an occasional basis. These are *de minimis* and insignificant departures from the Act that are not likely to have the effect of sweeping any employee into the management category who would not be in that category under PEBA. Because a legislative enactment is entitled to a presumption of validity, the PELRB will presume that the absence of the proviso from the ordinance does not imply denying statutory rights guaranteed to any class of employees under PEBA. *AFSCME and Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No. 3 (Dec. 20, 1994).
* **10-7E-4(Q), [Definitions-Public Employee.]**
  + **Court Judicial Employees**
    - *See* *Laura Chamas-Ortega v. 2nd Judicial District Court,* 7th Judicial. Dist. Ct. Case No. CV-04­7883 (March 10, 2006, J. Kase) in which the District Court reversed as “arbitrary and an abuse of discretion” the Board’s decision in *Chamas-Ortega v. Second Judicial District,* 01-PELRB-2004 (Nov. 9, 2004) holding that PEBA applies to employees of the New Mexico judiciary.
  + **Local ordinances’ limitations on scope**
    - A provision of a 26 (repealed in 2020) grandfathered labor ordinance or resolution shall be denied grandfathered effect where it denies the right to bargain collectively to any employees who are afforded this right under PEBA. *The Regents of the University of New Mexico v. New Mexico Federation of Teachers and American Assoc. of University Professors,* 1998-NMSC-020, 125 N.M. 401, 962 P.2d 1236. *See also City of Deming v. Deming Firefighters Local 4251*, 2007-NMCA-069, 141 N.M. 686, 160 P.3d 595. In *Deming Firefighters,* the New Mexico Court of Appeals relied on *Regents of the University of New Mexico v. New Mexico Federation of Teachers* to find that the grandfather clause did not apply to two provisions of Deming’s local labor relations ordinance: the first excluding fire department officers and the second, concerning impasse procedures. The Court remanded to the PELRB the separate question of whether the City's fire department officers meet the definition of supervisors under the PEBA, essentially affirming the Board’s decision in *City of Deming v. Deming Firefighters Local 4251*, 1 PELRB No. 2005 (March 31, 2005), but reversing the Board on an issue concerning the absence of binding arbitration. *See also IAFF Local 2362 v. City of Las Cruces,* 07-PELRB-2009 (July 6, 2009); *IAFF Local 4366 v. Santa Fe County,* 06-PELRB-2009 (May 7, 2009) (Battalion Commanders are supervisory and possibly managerial employees and therefore properly excluded from collective bargaining); *AFSCME v. N.M. Corrections Dep’t.* 08-PELRB-2012 (July 13, 2012) (Lieutenants’ inclusion would not render the bargaining unit an improper unit); *In re New Mexico Coalition of Public Safety Officers Ass’n and County of Santa Fe,* 78-PELRB-2012 (Dec. 5, 2012) (Sergeants accreted into existing bargaining unit); *AFSCME v. N.M. Corrections Dep’t.* 02-PELRB-2013 (Jan. 23, 2013) (Lieutenants did not meet the statutory definition of supervisors under PEBA).
    - A §10 local labor ordinance's definition of public employee violates PEBA where it excludes from its coverage part-lime regular, non-probationary employees who are covered under PEBA. *AFSCME and Los Alamos County Firefighters v. County of Los* Alamos, 1 PELRB No. 3 (Dec. 20, 1994). As a result of the 2020 amendments to the PEBA, all local boards are § 10 boards.
  + **Graduate Students**
    - *See UE & UNM Board of Regents*, PELRB 307-20. The union sought recognition as the exclusive representative for graduate students working for the university. The Hearing Officer found, based on UNM’s internal personnel policies, that the graduate students were not ’regular employees’ as that term is defined in the PEBA. The Board reversed this finding and held the graduate students to be regular employees under the PEBA who are entitled to bargain collectively through an exclusive representative. This case has not been fully resolved and staff anticipate a lengthy appeals process.
  + **University Research Park and Economic Development Act (URPEDA)**
    - *See United Health Professionals of New Mexico, AFT, AFL-CIO & UNM Sandoval Regional Medical Center,* PELRB Case No. 306-21. UNM Sandoval Regional Medical Center, Inc., a non­profit “research park corporation”, petitioned for certification. United Health Professionals of New Mexico, AFT, AFL-CIO moved to dismiss the petition claiming the URPEDA states that a research park facility is not a public agency and therefore cannot petition for certification. The Board ruled in favor of SRMC stating that, “The URPEDA was enacted prior to the PEBA authorizing state-wide public employee collective bargaining and its provisions at 21-28-7(A) that a research park corporation shall not be deemed an agency, public body or other political subdivision of New Mexico, presents a classic conflict question in consideration of NMSA 1978 §§ 10-7E-2; 10-7E-5; 10-7E-9 and 10-7E-13 (2020). Our legislature has provided for the eventuality of such conflicts by § 10-7E-3: “In the event of conflict with other laws, the provisions of the Public Employee Bargaining Act shall supersede other previously enacted legislation and rules; provided that the Public Employee Bargaining Act shall not supersede the provisions of the Bateman Act [6-6-11 NMSA 1978], the Personnel Act [Chapter 10, Article 9 NMSA 1978], the Group Benefits Act [Chapter 10, Article 7B NMSA 1978], the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], the Retiree Health Care Act [10-7C-1 to 10-7C-16 NMSA 1978], public employee retirement laws or the Tort Claims Act [41-4- 1 to 41-4-27 NMSA 1978].” Conspicuously absent from the listed “previously enacted legislation” unaffected by the passage of the Public Employee Bargaining Act is the URPEDA NMSA 1978 §§ 21-28-1 to 25, inclusive. Therefore, [we] conclude that URPEDA, to the extent it would exclude SMRC as a Public Employer other than the state for collective bargaining purposes, has been superseded by the PEBA NMSA §§ 10-7E-1, et seq. enacted in 2003 and amended in 2020.” To date, the case is currently on appeal.
* **10-7E-4(R), [Definitions- Public Employer.]**
  + **Generally**
    - The definition of “public employer” must be read in conjunction with the provision of the Act regarding a public employer's governing body, which, according to 7, is the policy making body, or the body or person charged with management of the local public body. Therefore, the critical question is who is charged with management of the public body. Determining who IS charged with the management of the local public body requires addressing the factual question of who has the authority to hire, promote, evaluate, discipline, discharge and set work. rules for the employees in question. *USWA and Gila Regional Medical Center,* 1 PELRB No.14 (Nov. 17, 1995).
    - A joint employer status exists when two or more employers co-determine those matters governing essential terms and conditions of employment. *USWA* and *Gila Regional Medical Center,* 1 PELRB No.14, (Nov. 17, 1995).
    - A management contract between a public hospital and a private managing firm does not change the public character of the hospital where the hospital retains all authority and control over the business, policies, operations and assets of the hospital. *USWA and Gila Regional Medical Center,* 1 PELRB No.14 (Nov. 17, 1995).
  + **University Research Park and Economic Development Act (URPEDA)**
    - Sandoval Regional Medical Center, a nonprofit “research park corporation”, petitioned to be certified and was opposed by the Union who argued that SRMC was a nonprofit “research park corporation” created pursuant to the New Mexico URPEDA and the URPEDA expressly provides that for personnel matters, research park corporations shall not be deemed a “public employer”. SRMC argued that it did not fall within the scope of PEBA and the PELRB does not have jurisdiction over it with respect to the Petition therein or other collective-bargaining and labor relations matters. The Hearing Officer concluded, “that both SRMC and its regular non-probationary employees are covered by the New Mexico Public Employee Bargaining Act is supported by PELRB precedent that the definition of “public employer” must be read in conjunction with the description of “appropriate governing body” in NMSA 1978, § 10-7E-7 (2003).” *See UHPNM-AFT and UNM Sandoval Reg. Med. Center, Inc.*, PELRB 306-21. As of this revision the case is on appeal before the District Court.
  + **Courts or judiciary**
    - *See Laura Chamas-Ortega v. 2nd Judicial District Court,* 7th Judicial Dist. Ct. Case No. CV-04­7883 (March 10, 2006, J. Kase) in which the District Court reversed as “arbitrary and an abuse of discretion” the Board’s decision in *Chamas-Ortega v. Second Judicial District,* 01-PELRB-2004 (Nov. 9, 2004) holding that PEBA applies to employees of the New Mexico judiciary.
  + **Other constitutionally independent employers**
    - The constitutional independence of New Mexico universities is not impaired by application of PEBA to its and its employees, because PEBA only requires employers and unions to bargain in good faith. The purpose of constitutional independence is to assure that the entities' mission and function is free from the whims of political interference, notwithstanding its funding through legislative appropriations. PEBA, however, does not require a public employer to accept any specific proposal; the employer always have final say over the financial consequences of any collective bargaining agreement; and employers do not have to accept any union proposal that interferes with their organizational mission. *The Regents of the University of New Mexico v. New Mexico Federation of Teachers and American Assoc. of University Professors,* 125 N.M. 401, 1998-NMSC-020, 962 P.2d 1236.
* **10-7E-4(S), [Definitions-Strike.]**
  + **Local ordinances' definition**
    - A local ordinance's definition of “strike” violates PEBA where it fails to include a requirement that the employee's absence be directed to the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment *AFSCME and Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No. 3 (Dec. 20, 1994).
    - A local ordinance's definition of strike violates PEBA where it prohibits certain forms of activity-slow downs, traffic ticket writing campaigns, mass resignations, and willful interference with the operations of the employer-that traditionally are not regarded as strike activity. *AFSCME* and *Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No. 3 (Dec. 20, 1994).
* **10-7E-4(T), [Definitions-Supervisor.]**
  + **Generally**
    - Under PEBA I the Board established a three-part test for determining whether an employee is a “supervisor” and therefore excluded from coverage under the Act. Since PEBA II the Board has continued to apply the same three-part two stage analysis but modified the requirement that the employee must devote a “substantial amount” of his or her worktime to supervisory duties to a “majority” of work time to supervisory duties to reflect the change under PEBA II to 10-7E-4(T). As a result, the following three-part test for determining whether an employee is a supervisor is established: (1) the employee must devote a majority of work time to supervisory duties; (2) the employee must customarily and regularly direct the work of two or more other employees*;* and (3) the employee must have authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively*.* If these requirements are met the analysis continues to determine whether the disputed 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; or (iv) is a lead employee or an employee who participates in peer review or occasional employee evaluation programs. Even if the initial three-part test is met, if any of the subsequent questions found in the definition can be answered in the affirmative, or the employee is a lead worker, or he or she participates in peer review or occasional employee evaluation programs, then the employee is not a supervisor under PEBA. *See, NEA and Jemez Valley Public Schools,* 1 PELRB No. 10 (May 19, 1995). *See also New Mexico State University Police Officers Association and New Mexico State University.* 1 PELRB No. 13 (June 14, 1995); *In re: Communications Workers of America, Local 7911 and Doña Ana County,* 1 PELRB No. 16 (Jan. 2, 1996); *IAFF Local 2362 v. City of Las Cruces,* 07-PELRB-2009 (July 6, 2009); *IAFF Local 4366 v. Santa Fe County,* 06-PELRB-2009 (May 7, 2009) (Battalion Commanders are supervisory and possibly managerial employees and therefore properly excluded from collective bargaining); *AFSCME v. N.M. Corrections Dep’t.* 08-PELRB-2012 (July 13, 2012) (Lieutenants’ inclusion would not render the bargaining unit an improper unit); *In re New Mexico Coalition of Public Safety Officers Ass’n and County of Santa Fe,* 78-PELRB-2012 (Dec. 5, 2012) (Sergeants accreted into existing bargaining unit); *AFSCME v. N.M. Corrections Dep’t.* 02-PELRB-2013 (Jan. 23, 2013) (Lieutenants did not meet the statutory definition of supervisors under PEBA).
    - Lieutenants in the Department of Corrections do not meet at least two of the three criteria required by PEBA §4(T); for supervisory status: (1) they do not devote a majority amount of work time to supervisory duties and they do not have authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively. It is arguable whether they meet the third criterion as well, i.e., customarily and regularly directing the work of two or more other employees because of the absence of independent discretion in the direction of their subordinates except in rare circumstances. *AFSCME, Council 18 v. N.M. Dep’t of Corrections,* 2-PELRB- 2013 (Jan. 23, 2013).
    - Whatever inferences may be drawn from the fact that “supervisors” are not expressly excluded from PEBA’s coverage under 5 they are nevertheless excluded by §10-7E-13(C). Where two statutes deal with the same subject, one general and the other specific, the specific statute controls. §13(C) being the more specific controls and supervisors are therefore excluded from PEBA's coverage. *Santa Fe Police Officers' Association v. City of Santa Fe,* 02-PELRB-2007 (October 14, 2007).
    - It is not the rank nomenclature (corporal, sergeant, lieutenant, captain, etc.) that is determinative but rather the facts related to whether the individual functions as a supervisor as defined under the Act. *In re: New Mexico Coalition of Public Safety Officers, Local 7911, CWA, AFL-CIO and Town of Bernalillo.* 1 PELRB No. 21 (July 7, 1997).
    - Although it may appear awkward to find a person (operation sergeant) of a like rank to his or her actual subordinates (shift sergeants) to be their supervisor, that is not prohibited under PEBA and the determination of supervisor must ultimately be based on the facts and the law, regardless of job title or rank. *In re Local 7911, Communications Workers of America and Doña Ana County,* 1 PELRB No. 16 (Jan. 2, 1996).
    - Including eight of the Detention Center's nine sergeant positions in the bargaining unit does not result in lack of supervision at the facility because these positions do have supervisory duties and responsibilities, just not enough compared to their overall actual day-to-day duties to meet the statutory definition for exclusion under PEBA. *In re: Communications Workers of America, Local 7911 and Doña Ana County,* 1 PELRB-16 (Jan. 2, 1996). *See also AFSCME v. N.M. Dep’t of Corrections*, 2 PELRB 2013 (July 13, 2012) (Lieutenants employed by the Department do not meet the statutory definition of supervisors under PEBA and are therefore not excluded from PEBA's coverage. The Lieutenants may be appropriately accreted into the existing bargaining unit.
    - The similarity of working conditions between a putative supervisor and his or her subordinates is not a criterion in the statutory definition of supervisor, and instead relates to community of interest. *In re: McKinley County Sheriffs Association Fraternal Order of Police* and *McKinley County,* 1 PELRB No. 15 (Dec. 22, 1995).
  + **Application to particular job positions**
    - Lieutenants in the Department of Corrections do not meet at least two of the three criteria required by PEBA §4(T); for supervisory status: (1) they do not devote a majority amount of work time to supervisory duties, and they do not have authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively. It is arguable whether they meet the third criterion as well, i.e., customarily and regularly directing the work of two or more other employees because of the absence of independent discretion in the direction of their subordinates except in rare circumstances. *AFSCME, Council 18 v. N.M. Dep’t of Corrections,* 2-PELRB- 2013 (Jan. 23, 2013).
    - The Hearing Officer relying on *NLRB v. Kentucky River Community Care,* 532 U.S. 706, 167 LRRM 2164 (2001) concluded that decisions made through ordinary technical or professional judgment do not constitute the exercise of independent judgment that the Board has discretion to determine the degree of independent judgment that an employee must utilize in order to be deemed a supervisor and that the existence of employer-specified standards, rules and regulations may constrain an employee’s judgment to such a degree that the direction of others does not rise to the level of supervisory authority. By application of that analysis Lieutenants in the Department of Corrections do not spend a majority of their time performing supervisory duties. *AFSCME, Council 18 v. N.M. Dep’t of Corrections,* 2-PELRB- 2013 (Jan. 23, 2013).
    - The Board reversed a hearing examiner’s conclusion that Battalion Captains did not spend a majority of their time engaged in work requiring the exercise of independent judgment with the result that Santa Fe County Fire Department Battalion Captains may not be accreted into the existing bargaining unit because they are supervisory and possibly managerial employees. *IAFF Local 4366 v. Santa Fe County,* 06-PELRB-2009, PELRB Case No. 321-08 (May 7, 2009).
    - Rio Rancho Police Department lieutenants are supervisors under PEBA because they effectively recommend discipline by issuing written and oral warnings: they effectively recommend promotion by evaluating their subordinates, since such evaluations are weighed in awarding promotions in pay grade under Department policies; they customarily and regularly direct the work of both their subordinate by instructing and guiding them in the proper interpretation of Department policies for them, by acting as incident commander at large operations and by regularly delegating and directing beat activities sergeants and the lower ranked patrol officers, and they spend a majority of their work time devoted to various supervisory duties, including but not limited to the direction of subordinates that require independent judgment and that are distinct from the work of their subordinates. *NMCPSO-CWA Local 7911 and City of Rio Rancho Police Department,* 04-PELRB-2009 (April 6, 2009). *But See In re New Mexico Coalition of Public Safety Officers Ass’n and County of Santa Fe,* 78-PELRB-2012 (Dec. 5, 2012) wherein Sergeants were accreted into existing bargaining unit and *AFSCME v. N.M. Corrections Dep’t.* 02-PELRB-2013 (Jan. 23, 2013) wherein Lieutenants were allowed to be accreted because they did not meet the statutory definition of supervisors under PEBA.
    - Administrative Interns, or “principals-in-training," are not supervisors because they merely assist with some limited Supervisory acts, and the purpose and emphasis of their job is to learn the job duties of a principal, to decide if they wish to become one. *American Federation of Teachers Local 4212 and Gadsden Independent School District,* 03-PELRB-2006, PELRB Case No. 169-06 (May 31, 2006).
    - Custodian Heads are not supervisors because they spend less than ten percent (10%) of their time engaged in strictly supervisory tasks. *American Federation* of *Teachers Local 4212 and Gadsden Independent School District,* 03-PELRB-2006 (May 31, 2006).
    - Food Service Managers are supervisors because they regularly supervise cooks and assistant managers. *American Federation* of *Teachers Local 4212 and Gadsden Independent School District,* 03-PELRB-2006 (May 31, 2006).
    - Head custodians and supervisory custodians at Las Cruces Public Schools are *not* supervisors under PEBA because they performed the same work as their subordinates and functioned as a lead employee. Additionally, some did not supervise at least two or more employees. *In re: Classified School Employees Council-Las Cruces and Las Cruces Schools,* 1 PELRB No. 20 (Feb. 13, 1997).
    - The Doña Ana County Detention Center's Operations Sergeant is a supervisor under PEBA. While all the other sergeant positions are largely interchangeable, her job duties are very different from those of other sergeants and all the other sergeants. In addition, the booking officer and maintenance worker report to her. In contrast to the other Detention Centers sergeants, her work time is devoted almost entirely to supervisory duties such as directing her subordinates' work by reviewing their paperwork for accuracy and completeness, overseeing their work, and evaluating their performance; disciplining and recommending discipline; conducting monthly sergeant meetings; and ensuring that the facility's policies and procedures are communicated to and carried out by staff. Her job duties are also different from that of her subordinates, since unlike other sergeants she works in the administrative part of building and has little contract with detainees, and since she has additional responsibilities regarding facility maintenance and repair. *In* re *Communications Workers of America, Local 7911 and Doña Ana County,* 1 PELRB No. 16 (Jan. 2, 1996).
    - The positions of shift sergeant, classification sergeant, juvenile sergeant and transport sergeant at the Doña Ana County Detention Center are not supervisors under PEBA. The amount of supervisory direction undertaken by the sergeants varies from sergeant to sergeant, and the amount of time a sergeant spends directing subordinates is limited to 25-30% of their workday or may even be eliminated entirely depending on how busy and short-handed a shift may be. The bulk of these sergeants' workday is spent in the performance of non-supervisory duties which are substantially similar to that of their subordinates, such as (1) walking the floor of the jail, (2) checking for contraband , (3) handing out or delivering meals, (4) answering the telephone, (5) cleaning the facility, (6) removing detainees from the cellblocks for court appearances or release, (7) performing intake interviews, (8) escorting detainees to showers, (9) conducting visual searches, and (10) escorting visitors to and from the jail. Thus, these sergeants are mere lead workers, not supervisors, because they perform most, if not all, of the duties as those of their subordinates: they explain tasks to them and expedite the work of a shift that is small in number of personnel; their supervisory functions are incidental and occasional; and, for the most part, their exercise of independent judgment and discretion is limited by reliance on such things as decision trees and the standard operating procedures manual. *In re: Communications Workers* of *America, Local 7911 and Doña Ana County,* 1 PELRB No. 16 (Jan. 2, 1996).
    - A maintenance supervisor is not a supervisory employee where he spends most if not all of his time doing maintenance work; he does not have to directly tell the custodians what to do as they know what needs to be done and complete their work without instruction from him; and it is the principal, not the maintenance supervisor, that has the authority to hire, promote, discipline or discharge the custodians, or effectively recommend any of these actions. *NEA and Jemez Valley Public Schools,* 1 PELRB No.10 (May 19, 1995).
    - Sergeants were accreted into an existing bargaining unit because their actual duties as performed did not meet the three-part test established by the Board to determine whether an employee is a “supervisor” as that term is defined by the Act. *In re: New Mexico Coalition of Public Safety Officers Ass’n and County of Santa Fe,* 78-PELRB-2012 (Dec. 5, 2012).
    - Lieutenants did not meet the statutory definition of supervisors under PEBA and their inclusion would not render the bargaining unit an improper unit. *AFSCME v. N.M. Corrections Dep’t.* 02-PELRB-2013 (Jan. 23, 2013).
  + **Directing the work of subordinates**
    - This element of the PEBA definition of supervisor is distinct from “supervisory duties”. Thus, an employee need not spend a majority of his or her work time directing the work of subordinates but need only do so “customarily and regularly”. The phrase “customarily and regularly" means that the conduct is commonly or frequently practiced or observed, at fixed or normal intervals. *NMCPSO/CWA Local 7911 and City of Rio Rancho Police Department,* 04-PELRB-2009, PELRB Case No. 319-08 (April 6, 2009).
    - "Directing" the work of subordinates does not require the supervisor to literally instruct his or her subordinates in how to perform every aspect of their jobs. Thus, an employee may be a
    - “supervisor" under PEBA even though his or her subordinates are largely capable of executing their job duties without direction. It is sufficient in these cases that the disputed employee regulates or determines the activities or course of performance of his or her subordinates, organizes or energizes their work, or trains and leads the performance of their duties. *NMCPSO-CWA Local 7911 and City* of *Rio Rancho Police Department,* 04-PELRB-2009, PELRB Case No 319-08 (April 6, 2009).
    - “Post orders” exist for every duty assignment at the Employer’s facilities setting forth how each assignment is to be performed. Lieutenants’ reliance upon post orders issued by the Warden of each institution is significant in that they are an indicium of the limitation on, if not the total absence of, the lieutenant’s ability to exercise independent judgment. *AFSCME, Council 18 v. N.M. Dep’t of Corrections,* 2-PELRB- 2013 (Jan. 23, 2013).
    - No set of standardized rules and procedures can anticipate every contingency and the testimony supports a conclusion that from time to time a lieutenant may be called upon to exercise independent judgment and discretion whenever a situation arises that is not covered under a post order. However, the witnesses testified that such instances rarely occur. When asked, one witness could not think of a single instance arising in his multiple year career that was not covered by a post order. *AFSCME, Council 18 v. N.M. Dep’t of Corrections,* 2-PELRB- 2013 (Jan. 23, 2013).
    - The weight of the evidence supported a conclusion that the direction given by lieutenants to their subordinates is almost completely constrained by the post orders issued by the Warden of each facility and therefore, time spent enforcing compliance with those orders does not involve the exercise of independent judgment sufficient to constitute supervision as contemplated under PEBA – any independent judgment exercised was found to be “occasional” or in the performance of non-supervisory duties. *AFSCME, Council 18 v. N.M. Dep’t of Corrections,* 2-PELRB-2013 (Jan. 23, 2013).
  + **Effectively recommend hiring, promotion or discipline**
    - Duties performed by a sergeant are not supervisory merely because the County has designated the sergeant position to be supervisory. Otherwise, an employer could, merely by labeling positions as supervisory, exclude whole classes or groups of employees from the Act's coverage, without regard to statutory definitions and the Board's role in adjudicating unit determination issues. *In re: Local 7911, Communications Workers of America and Doña Ana Deputy Sheriffs ' Association, Fraternal Order of Police and Doña Ana County,* 1 PELRB No. 19 (Aug. 1, 1996).
    - The public employer retains the right to designate a position as supervisory in nature, but PEBA provides the definition for supervisor for purposes of collective bargaining and unit composition, even over a conflicting definition of a local ordinance. *NEA v. Bernalillo Public Schools,* 1 PELRB No. 17 (May 31, 1996).
  + **Employer expectations, job descriptions, and/or SOP manuals**
    - An employer's expectation that an employee shall supervise subordinates even when they are performing the same work as those subordinates is not relative under the PEBA definition. Rather, the PEBA definition requires consideration of duties actually performed, while expectations may not surface or materialize. *In re Communications Workers* of *America,* Local 7911 and *Doña Ana County,* 1 PELRB No. 16 (Jan. 2, 1996).
    - In determining whether or not an employee is an excluded supervisor, a hearing examiner properly relies on witness testimony regarding actual job duties, rather than basing the determination on written job descriptions. *In re: Communications Workers* of *America, Local 7911 and Doña Ana County,* 1 PELRB No. 16 (Jan. 2, 1996).
    - Unit inclusion and exclusion determinations must be based on actual duties performed, rather than on written Job descriptions or Standard Operating Procedures manuals, which merely reflect expectations that may not materialize or surface, especially when juxtaposed against actual duties herein. *In re: McKinley County Sheriff's Association Fraternal Order of Police and McKinley County,* 1 PELRB No. 15 (Dec. 22, 1995).
    - Basing unit determinations on expectations without regard to the actual duties performed could result in the denial of statutory rights to classes of employees. *In re: McKinley County Sheriff's Association Fraternal Order of Police and McKinley County,* 1 PELRB No. 15 (Dec. 22, 1995).
    - Testimony that police sergeants are expected to supervise 100% of the time only reflects the expectation that they will perform supervisory duties whenever called upon to do so. Where, in fact, the expectation only results in the occasional performance or assumption of supervisory or directory roles, the position meets the proviso in the definition for excluding a position from supervisory status. *New Mexico State University Police Officers Association and* New *Mexico State University,* 1 PELRB No. 13 (June 14, 1995).
    - The weight of the evidence supported a conclusion that the direction given by lieutenants to their subordinates is almost completely constrained by the post orders issued by the Warden of each facility and therefore, time spent enforcing compliance with those orders does not involve the exercise of independent judgment sufficient to constitute supervision as contemplated under PEBA – any independent judgment exercised was found to be “occasional” or in the performance of non-supervisory duties. *AFSCME, Council 18 v. N.M. Dep’t of Corrections,* 2-PELRB- 2013 (Jan. 23, 2013).
  + **Independent judgment** 
    - An important factor in determining supervisory status is whether the employee is exercising independent judgment. or routinely ensuring that procedures and policies are followed. Where an employee is merely relaying instruction from a supervisor or ensuring that subordinates adhere to an established procedure, that individual is not a supervisor under the Act. *In re: McKinley County Sheriff's Association Fraternal Order of Police and McKinley County,* 1 PELRB No. 15 (Dec. 22, 1995).
    - A police lieutenant is appropriately excluded as a supervisor where his or her duties go beyond simply ensuring established procedures and policies are followed, and instead require the use of independent judgment in directing employees. For example, the lieutenant is responsible for the supervision of the patrol division through the planning, controlling and direction of work, i.e., through planning work schedules, determining types and numbers of employees to assign to each shift, and reassigning calls issued by telecommunications. Furthermore, the lieutenant is involved with the applicant review board, whereas the sergeant's rote in that process is minimal or nonexistent. *In re: McKinley County Sheriff's Association Fraternal Order of Police* and *McKinley County,* 1 PELRB No. 15 (Dec. 22, 1995).
    - A telecommunicator supervisor is excluded from a bargaining unit where he is responsible for the overall supervision of the communications personnel; has sole scheduling responsibility: disciplines and evaluates subordinate telecommunicators or effectively recommends such action; is responsible for other telecommunicators' proficiency training; and there is no evidence presented demonstrating that he does not devote a substantial amount of work time to supervisory duties, or that he performs substantially the same duties as his Subordinates. *New Mexico State University Police Officers Association and New Mexico State University,* 1 PELRB No. 13 (June 14, 1995).
    - The Hearing Officer relying on *NLRB v. Kentucky River Community Care,* 532 U.S. 706, 167 LRRM 2164 (2001) concluded that decisions made through ordinary technical or professional judgment do not constitute the exercise of independent judgment that the Board has discretion to determine the degree of independent judgment that an employee must utilize in order to be deemed a supervisor and that the existence of employer-specified standards, rules and regulations may constrain an employee’s judgment to such a degree that the direction of others does not rise to the level of supervisory authority. By application of that analysis Lieutenants in the Department of Corrections do not spend a majority of their time performing supervisory duties. *AFSCME, Council 18 v. N.M. Dep’t of Corrections,* 2-PELRB- 2013 (Jan. 23, 2013).
  + **Lead employees** 
    - A "lead employee" is one who performs the same work as his or her subordinates and who does not engage in distinct and separate supervisory duties that require the exercise of independent judgment. *NMCPSO-CWA Local 7911 and City of Rio Rancho Police Department,* 04- PELRB-2009, PELRB Case No. 319-08 (April 6, 2009). *But See IAFF Local 4366 v. Santa Fe County,* 06-PELRB-2009, PELRB Case No. 321-08 (May 7, 2009) (reversing the hearing examiner's findings and conclusions that Fire Department Battalion Captains are essentially lead employees, even though their duties were substantially different, because a majority of their work time was nonetheless spent on routine or clerical duties that did not call for the exercise of independent judgment).
    - Head custodians and supervisory custodians at Las Cruces Public Schools are not supervisors under PEBA because they performed the same work as their subordinates and functioned as a lead employee. Additionally, some did not supervise at least two or more employees. *In re Classified School Employees Council-Las Cruces and Las Cruces Schools,* 1 PELRB No. 20 (Feb. 13, 1997).
    - The positions of shift sergeant, classification sergeant, juvenile sergeant and transport sergeant at the Doña Ana County Detention Center are lead workers, not supervisors, because they perform most, if not all, of the duties as those of their subordinates: they explain tasks to them and expedite the work of a shift that is small in number of personnel; their supervisory functions are incidental and occasional; and, for the most part, their exercise of independent judgment and discretion is limited by reliance on such things as decision trees and the standard operating procedures manual. *In re: Communications Workers of America, Local 7911 and Doña Ana County,* 1 PELRB No. 16 (Jan. 2, 1996).
    - A sergeant's actual duties are of a routine, ministerial nature and fall within the role and function of a lead employee, where the leader (sergeant) performs the duties of the workers (deputies), expedites or facilitates the performance or completion of those duties, and explains tasks to new workers, and supervisory functions "are incidental to the duties performed as a member of the work shift, *In re: McKinley County Sheriffs Association Fraternal Order of Police and McKinley County,* 1 PELRB No. 15 (Dec. 22, 1995).
    - Notwithstanding their job descriptions or the paramilitary structure of the Santa Fe Fire Department, captains are not supervisors under PEBA, but rather are lead employees with limited authority, whose duties are substantially similar to those of their subordinates including firefighting, and who exercise no independent judgment in directing other employees *Firefighters and City of Santa* Fe, 1 PELRB No. 6 (Jan. 19, 1995).
  + **Effect of NLRA precedent**
    - The definition of “supervisor” in PEBA is not the same as, or closely similar to, the definition contained in the NLRA because PEBA's definition is delimited by provisos that do not exist in the NLRA definition. Consequently, positions that *may* be supervisory under the NLRA and excluded from the bargaining unit under that act may not be supervisory under PEBA given the difference in definitions *New Mexico State University Police Officers Association and New Mexico State University,* 1 PELRB No. 13 (June 14, 1995).
    - The Hearing Officer relying on *NLRB v. Kentucky River Community Care,* 532 U.S. 706, 167 LRRM 2164 (2001) concluded that decisions made through ordinary technical or professional judgment do not constitute the exercise of independent judgment that the Board has discretion to determine the degree of independent judgment that an employee must utilize in order to be deemed a supervisor and that the existence of employer-specified standards, rules and regulations may constrain an employee’s judgment to such a degree that the direction of others does not rise to the level of supervisory authority. By application of that analysis Lieutenants in the Department of Corrections do not spend a majority of their time performing supervisory duties. *AFSCME, Council 18 v. N.M.* Dep’t of Corrections, 2-PELRB- 2013 (Jan. 23, 2013).
  + **Local ordinances' definition**
    - A § 26(B) (Repealed in 2020, see requirements under § 10-7E-10) local ordinance's definition of “supervisor” violated PEBA where it required the employee to "devote a substantial amount of work time in supervisory duties," rather than a "majority of work time" as under PEBA, *IAFF Local 2362 v. City of Las Cruces*, 07-PELRB-2009 (July 6, 2009).
    - **Note:** The hearing examiner, whose report was adopted as the board's own, read ·substantial" in this case to mean as little as 30% or 40%, and the hearing examiner believed this definition would operate to exclude more persons that would be covered under PEBA, However, in fact, the prior PELRB under PEBA I interpreted "substantial' to mean "'being largely but not wholly that which is specified,'" *See New Mexico State University Police Officers Association and New Mexico State University,* 1 PELRB No. 13 (June 14, 1995), and is not as little as either 25-40%. *Id.; In re: Communications Workers of America, Local 7911 and Doña Ana County,* 1 PELRB No. 16 (Jan, 2, 1996); and *In re: Local 7911*, *Communications* Workers *of America and Doña Ana Deputy Sheriffs' Association, Fraternal Order of Police and Doña Ana County,* 1 PELRB No. 19 (Aug. 1, 1996). Moreover, in a prior recent case, the Board adopted a hearing examiner report that based its alternative reasoning on the old meaning of "substantial" as interpreted by the first PELRB under PEBA I. *Compare NMCPSO-CWA Local 7911 and City of Rio Rancho Police Department,* 04-PELRB-2009, PELRB Case No. 319-08 (April 6, 2009).
    - A provision of a grandfathered local ordinance that defines certain classes of employees as supervisors, and thus excluded them from the ordinances or resolution's coverage, shall be denied grandfathered effect under PEBA, *City of Deming v. Deming Firefighters Local 4251,* 2007-NMCA-686, 141 N.M. 686, 160 P.3d 595*.*
    - Local boards approved by the PELRB under § 10 are required to follow all procedures and provisions of the Act, and therefore must follow PEBA's definition of “supervisor”. *Las Cruces Professional Fire Fighters and IAFF, Local No. 2362 v. City of Las Cruces,* 1997-NMCA-044, 123 N.M. 329, 940 P.2d 177.
    - A § 10 local ordinance's definition of supervisor violates PEBA by expressly including police and fire department sergeants, lieutenants, captains and higher ranks, because it thereby expands the PEBA definition and denies organizing and bargaining rights to classes of employees who may be guaranteed rights under PEBA. *AFSCME* and *Los Alamos County Firefighters v.* County *of Los* Alamos, 1 PELRB No. 3 (Dec. 20, 1994).
    - Unilateral designation of certain job positions as supervisory usurps the function of the Board or local board, in a representation proceeding, to determine bargaining unit composition. *AFSCME* and *Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No. 3 (Dec. 20, 1994).
    - The absence from a local ordinance's definition of supervisor of the statutory proviso is significant because its absence, unlike in the case of the proviso for management employees, is likely to sweep some employees into the category of supervisor who would not be supervisors under PEBA. *AFSCME and Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No. 3 (Dec. 20, 1994).
  + **Majority of work time**
    - The 2020 amendment codified that the PEBA requires a “majority of work time be devoted to supervisor duties. PELRB jurisprudence concerning § 26(B) local ordinances requiring a "substantial amount of time "being declared void because the local ordinance would exclude more employees than does the PEBA, by excluding those employees who supervise only 30% or 40% or some other substantial amount of their work time (*IAFF Local* 2362 *v. City of Las Cruces,* 07-PELRB-2009 (July 6, 2009). See also *NMCPSO-CWA Local 7911 and City of* Rio *Rancho Police Department,* 04-PELRB-2009, PELRB Case No. 319-08 (April 6, 2009); *Santa Fe Police Officers ' Association v. City of Santa Fe*, 02-PELRB-2007 (Oct. 14, 2007) while not not overruled are certainly “old law” rendered unnecessary by the 2020 amendment eliminating Section 26(B) boards.).
  + **Routine, ministerial duties**
    - "Routine, clerical or ministerial duties" are duties that do not require the exercise of independent judgment and such duties therefore cannot be supervisory in nature. *NMCPSO-CWA Local 7911 and City of Rio Rancho Police Department,* 04-PELRB-2009, PELRB Case No. 319-08 (April 6, 2009). *But see IAFF Local 4366 v. Santa Fe County,* 06-PELRB-2009, PELRB Case No. 321-08 (May 7, 2009) (reversing the hearing examiner's findings and conclusion that Fire Department Battalion Captains are not supervisors because, although they do have supervisory duties, a majority of their work time is spent on routine, ministerial duties).
    - Sergeants are appropriately included in the bargaining unit where the majority of their work time is consumed by duties of a routine nature, which are also closely aligned with the duties performed by subordinate patrol officers *and* deputies. *In re: McKinley County Sheriffs Association Fraternal Order of Police* and *McKinley County,* 1 PELRB No. 15 (Dec. 22, 1995).
    - A sergeant's actual duties are of a routine and ministerial nature, and fa11 within the role and function of a lead employee, where the sergeant performs the duties of the deputies; expedites or facilitates the performance or completion of those duties; explains tasks to new workers; and any supervisory functions "are incidental to the duties performed as a member of the work shift. *In re: McKinley County Sheriffs Association Fraternal Order of Police* and *McKinley County,* 1 PELRB No. 15 (Dec. 22, 1995).
  + **Substantial amount of work time**
    - Under the PEBA I definition of supervisor, 40% of work time was held to be insufficient to constitute "substantial amount of work time: *In re: Local 7911*, *Communications Workers of America and Doña Ana Deputy Sheriffs' Association, Fraternal Order of Police and Doña Ana County,* 1 PELRB No. 19 (Aug. 1, 1996).
    - Under PEBA I definition of supervisor, 25-30% of work time was held to be insufficient to constitute "substantial amount of work time." *In re: Communications Workers* of *America, Local 7911 and Doña Ana County, 1* PELRB No. 16 (Jan. 2, 1996)
    - Under the PEBA I definition of supervisor, "substantial" was interpreted "according to its plain and ordinary meaning found in Webster's New Collegiate Dictionary' to mean ·' ... considerable in quantity, significantly large.... being largely but not wholly that which is specified," and 25% of work time was held to be insufficient to meet this standard. *New Mexico State University Police Officers Association and New Mexico State University,* 1 PELRB No. 13 (June 14, 1995).
    - Much of the administrative work lieutenants engage in "is of a routine or clerical nature, such as recording attendance, or creating shift rosters rather than engaging in actually scheduling. Administrative duties such as completing serious incident reports in which the lieutenants merely compile the reports of others, or processing attendance records are not supervisory in nature. Based on witness testimony and being generous to the employer in the estimation of time spent in duties that could arguably be described as “supervisory” as contrasted with ministerial or administrative functions, the Hearing Officer calculated approximately 4.25 hours out of a possible 12-hour shift that may be considered to be supervisory. It cannot be said based on that testimony that the lieutenants at issue devote a majority amount of work time to supervisory duties. *AFSCME, Council 18 v. N.M. Dep’t of Corrections,* 2-PELRB- 2013 (Jan. 23, 2013).
  + **Substantially same duties**
    - It is not sufficient to perform substantially different duties, if the majority of the different duties are routine, clerical or ministerial in nature because they do not involve the exercise of independent judgment. *NMCPSO-CWA Local 7911 and City of Rio Rancho Police Department,* 04-PELRB-2009, PELRB Case No. 319-08 (April 6, 2009), and attached. adopted hearing examiner report. *But see IAFF Local 4366 v. Santa* Fe *County,* 06-PELRB-2009, PELRB Case No. 321-08 (May 7, 2009) (reversing the hearing examiner's findings and conclusion that Fire Department Battalion Captains could be accreted into the existing bargaining unit because, although their duties were substantially different, a majority of their work time was nonetheless spent on routine or clerical duties that did not call for the exercise of independent judgment).
    - Police sergeants are not excluded as supervisors where they spend 75% of their work engaged in the same patrol duties as their subordinates, such as patrolling the university, issuing citations, appearing in court, and providing support or backup to other officers. *New Mexico State University Police Officers Association and New Mexico State University,* 1 PELRB No. 13 (June 14, 1995).
    - Notwithstanding their job descriptions or the paramilitary structure of the Santa Fe Fire Department, captains are not supervisors under PEBA, but rather are lead employees with limited authority, whose duties are substantially similar to those of their subordinates including firefighting, and who exercises no independent judgment in directing other employees. *Firefighters and City of Santa Fe,* 1 PELRB No.6 (Jan. 19, 1995).
  + **Supervisory duties**
    - Supervisory duties are marked by the use of independent judgment, and supervisors are distinguished from lead employees who typically do substantially the same job as their subordinates except for occasional routine or clerical duties that do not require independent judgment. *NMCPSO-CWA Local 7911 and City of Rio Rancho Police Department,* 04-PELRB-2009, PELRB Case No. 319-08 (April 6, 2009), and attached, adopted hearing examiner report. *But see IAFF Local 4366 v. Santa Fe County,* 06-PELRB-2009, PELRB Case No. 321-08 (May 7, 2009) (reversing the hearing examiner's findings and conclusion that Fire Department Battalion Captains could be accreted into the existing bargaining unit because, although their duties were substantially different, a majority of their work time was nonetheless spent on routine or clerical duties that did not call for the exercise of independent judgment).
    - Supervisory duties are not limited to directing the work of others, and can instead include any administrative or liaison duties that involve the use of independent judgment in effectuating the employer's purposes, goals and objectives. *NMCPSO-CWA Local 7911 and City of Rio Rancho Police Department,* 04-PELRB-2009, PELRB Case No. 319-08 (April 6, 2009).
* **10-7E-5 [Rights of public employees.]**
  + **Right to *Excelsior* list of names and address**
    - The failure to provide a union with the names and home addresses of proposed bargaining unit employees interferes with, restrains or coerces the public employees in their right to form, join or assist a union for purposes of collective bargaining. *SSEA, Local* 3878 *v. Socorro Consolidated School District,* 05-PELRB-2007. (Dec. 13, 2007), citing *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1996).

**Note:** By citing with approval to *Excelsior* the Board implicitly rejected arguments of counsel that *Excelsior* should not apply to the public sector, and that the PELRB should follow precedent under the Federal Labor Management and Employees Relations Act, 29 USC §§ 7101 *et seq*. rather than the NLRA.

* + **Supervisors excluded**
    - The failure to expressly exclude supervisors from those public employees protected under § 5 was a clerical or typographical error, and the omission does not mean that supervisors are covered under PEBA provided that they are represented in a separate bargaining unit under § 13(A). The continued exclusion of supervisors under PEBA II was balanced by the legislature against the narrowing of the definition of supervisor (or expansion of the employees covered under PEBA) by use of the phrase "majority of work time" rather than "substantial amount of work time." *Santa Fe Police Officers' Association v. City of Santa Fe,* 02-PELRB-2007 (Oct. 14, 2007).

**Note:** This decision characterizes “substantial amount of work time" differently than did the prior PELRB under PEBA I.

* + **Union Representation during disciplinary interviews**
    - In a split ruling the Board held that *Weingarten*-type rights exist under PEBA. *See AFSCME, Council 18 v. New Mexico Children, Youth and Families Department,* 10-PELRB-2013 (May 15, 2013). There are several prior cases discussing the issue, some of which resulted in Hearing Officers’ decisions not appealed to the full Board and therefore, under PELRB’s rules, not binding precedent. Others were appealed to the Board and may be cited as precedence including one case involving the same Respondent as in 10-PELRB-2013: In *Pita S. Roybal v. CYFD*, 02-PELRB-2006, the employee appealed a Hearing Officer’s dismissal of her PPC on the ground that *Weingarten* rights did not apply to her case. The Board affirmed the Hearing Officer’s dismissal on the ground that the meeting at issue was not investigatory. In so doing the Board did not question that *Weingarten* rights exist under PEBA; rather, it enumerated them.
    - In *AFSCME, Council 18 v. N.M. Dep’t of Health*, 06-PELRB-2007 the Board adopted the principle that: “...PEBA protects peaceful concerted activity for mutual aid and support to the same extent as does the NLRA... Comparing PEBA to the NLRA...the protections provided by PEBA are
    - sufficiently similar to those provided by the NLRA to warrant the inference that the New Mexico Legislature intended to protect public employees engaged in more general concerted activities, not only those activities performed to assist a labor organization.” (Citation omitted). The Board relied on Section 5 of PEBA finding that it provides “basically the same rights” as Section 7 of the NLRA. The differences in text “appear to be directed to streamlining the language utilized in the NLRA, rather than limiting or narrowing the enunciated rights." *Also see, AFSCME, Council 18 v. N.M. Children, Youth and Families Dep’t.* 1-PELRB-2013 (PELRB 122-12, May 15, 2013).
    - In *AFSCME Council 18, on Behalf of Daniel Nogales v. City of Albuquerque Parks and Recreation Department and the City of Albuquerque Personnel Board*; 2nd Judicial District Court No. CV 202­2012-02239 Parks and Recreation Department worker Daniel Nogales appeal to the District Court from a decision of the Albuquerque Personnel Board upholding termination of his employment. AFSCME raised two issues on appeal on behalf of Nogales: (1) Nogales’ termination is contrary to law because he was denied his right to union representation during the investigative process, contrary to *NLRB v. Weingarten, Inc*., 420 U.S. 251 (1975) and (2), The Personnel Board’s decision as not supported by substantial evidence. The City argued that *Weingarten*’s application is limited to private sector employees and that the Personnel Board was without jurisdiction to hear the issue. The Court stated that although it is “unquestionable that *Weingarten* specifically addressed a private sector employee who was covered under the National Labor Relations Act (“NLRA”) ... the City has not explained why the PEBA should not be interpreted in the same way as the NLRA was interpreted in *Weingarten* or otherwise substantiated its argument. Overall, the Court is not convinced that the PEBA does not encompass *Weingarten* rights.” Neither was the Court convinced that the Personnel Board did not have jurisdiction to address the *Weingarten* dispute. While acknowledging that such disputes would typically be heard as a PPC by the City’s Labor-Management Relations Board, a *Weingarten* violation can affect imposed discipline as was, therefore, “highly relevant to the Personnel Board.” As to the merits of the *Weingarten* violation the Court ruled that a violation of the employee’s rights occurred when the Assistant Superintendent denied his request for union representation at the initial meeting but that *Weingarten* rights did not apply to law enforcement investigation of potential crimes. Therefore, no violation occurred when he was denied union representation when APD sought to interview him.
* **10-7E-7, [Appropriate governing body; public employer.]**
  + - Instrumentalities, agencies and institutions of local government are included as separate appropriate governing bodies under PEBA by virtue of use of the phrase "local public body" in § 7. *USWA and Gila Regional Medical Center,* 1 PELRB No. 14 (Nov. 17, 1995)
    - As an instrumentality, agency or institution of Grant County that is solely responsible for managing the hospital and for performing all tasks and assuming all responsibilities associated with the hospital's employees, the Gila Regional Medical Center is a public employer under the Act and is the appropriate governing body. *USWA and Gila Regional* Medical *Center and Grant County Board of County Commissioners,* 1 PELRB No. 14 (Nov. 17, 1995).
    - A County is not an appropriate governing body where its instrumentality, agent or institution routinely acts independently of the County and disregards County Commissioner recommendations, and where the County has historically denied legal liability related to the operation of the instrumentality, agent or institution. *USWA and Gila Regional Medical Center and Grant County Board of County Commissioners*, 1 PELRB No. 14 (Nov. 17, 1995).
    - The definition of "public employer" must be read in conjunction with the provision of the Act regarding a public employer's "governing body which, according to § 7, is the policy making body, or the body or person charged with management of the local public body. Therefore, the critical question is who is charged with management of the public body. Determining who is charged with the management of the local public body requires addressing the factual question of who has the authority to hire, promote, evaluate, discipline, discharge and set work rules for the employees in question. *In re: United Steelworkers Associations and Gila Regional Medical Center and Grant County Board of County Commissioners*, 1 PELRB No. 14 (Nov. 17, 1995).
* **10-7E-8, [PELRB; created; terms; qualifications.]**
  + - The union sought a writ of mandamus from the Supreme Court to prohibit the Governor from removing two members of the Public Employee Labor Relations Board. The Supreme Court granted the writ, holding that none of the PELRB members served at the pleasure of the Governor, though the Public Employee Bargaining Act obligates the Governor to appoint them. Based on Article XX, Section 2 of the New Mexico Constitution, the Court found that the third neutral board member whose appointment had expired continued to serve until his successor is duly qualified “unless he is lawfully removed.” Because constitutional due process required a "neutral tribunal with members who were free to deliberate without fear of removal by a frequent litigant such as the Governor. the Governor was enjoined from removing the PELRB members. *AFSCME v. Martinez and the State of New Mexico,* 2011-NMSC-018, No. 32,905.
* **10-7E-9(A), [PELRB; powers and duties-issue regulations.]**
  + **PELRB regulations as force of law**
    - PELRB regulations have the force of law if promulgated in accordance with the statutory mandate to carry out and effectuate the purpose of PEBA. *City of Las Cruces v. Public Employee Labor Relations Bd.,* 1996-NMSC-024, 121 N.M. 688, 917 P.2d 451.
* **10-7E-9(B), [PELRB; powers and duties-conduct hearings.]**
  + **Authority to conduct adjudicatory hearings**
    - The separation of powers doctrine does not prevent the PELRB, an executive agency, from acting as an adjudicatory body by passing on the merits of a complaint alleging that a local labor ordinance's provisions violate PEBA. *Santa Fe County* and *AFSCME,* 1 PELRB No.1 (Nov. 18, 1993).

*See also AFSCME and Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No. 3 (Dec. 20, 1994).

* **§ 10-7E-9(F), [PELRB; powers and duties-administrative remedies.]**
  + **Attorney fees**
    - The imposition of attorney fees is not an appropriate administrative remedy under PEBA. *AFSCME and Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No.3 (Dec. 20, 1994).
  + **Denial of local board approval**
    - Where a local labor ordinance violates PEBA, the PELRB may deny approval of the application for a local board and may declare the ordinance to be of no effect unless and until the governing body revises the offending provisions consistent with the Board's determination. *AFSCME* and *Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No. 3 (Dec. 20, 1994)
  + **Duty of fair representation (DFR) claims**
    - The PELRB lacks authority under § 9(F) to either award monetary damages to an aggrieved union member for a union's breach of its duty of fair representation, or to order the Union to reinstate an employee allegedly improperly terminated as a result of the Union's breach. Therefore, claims for breach of the duty to fairly represent bargaining unit members cannot be brought before a Labor Relations Board and must instead be filed in District Court. *Callahan v. New Mexico Federation of Teachers-TVI,* 2006-NMSC-010, 139 N.M. 201, 131 P.3d 51.
    - A union member stated a claim for relief for breach of the duty of fair representation when he pleaded that the union had acted arbitrarily, in bad faith, and in violation of its trust when it refused to press the member's grievance to arbitration. *Callahan,* 2006-NMSC-010, (reiterating the holding in *Jones v. International Union of Operating Engineers,* 1963-NMSC-118, 72 N.M. 322, 330-32, 383 P.2d 571, 576-78. "[T]he breach of duty of fair representation requires a showing of arbitrary, fraudulent, or bad faith conduct[.]" *Id.* ¶¶ 13-15; *See also Vaca v. Sipes,* 386 U.S. 171, 190, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967) ("A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith."). The claim for breach of the duty of fair representation cannot be premised upon mere negligence. *See Callahan, Id*; *See also United Steelworkers of Am. v. Rawson,* 495 U.S. 362, 372-73, 110 S. Ct. 1904, 109 L.Ed.2d 362 (1990) (stating that mere negligence will not state a claim for breach of the duty of fair representation); *Webb v. ABF Freight Sys., Inc.,* 155 F.3d 1230, 1240 (10th Cir.1998) (stating that a union does not "violate[ ] its duty of fair representation by mere negligent conduct; carelessness or honest mistakes are not sufficient to impose liability on a union").
  + **Punitive damages**
    - The imposition of punitive damages is not an appropriate administrative remedy under PEBA. *AFSCME and Los Alamos County Firefighters v. County of Los* Alamos, 1 PELRB No. 3 (Dec. 20, 1994).
* **10-7E-9(G), (Amended in 2020), [PELRB; powers and duties-fair share.]**
  + **Fair share as a subject of bargaining under PEBA I and II no longer enforceable**
    - PEBA II expressly identified fair share payments as a permissive subject of bargaining, whereas PEBA I had interpreted it as a mandatory subject. *Cf*. § 10-7E-9(G) and § 10-7D-9(G). This provision has since been rendered moot after the U.S. Supreme Court’s decision in *Janus v. AFSCME,* 138 S. Ct. 2448, 2486 (2018), which held that union dues deduction agreements for agency fees (fair share payments) are no longer enforceable.
    - Under PEBA I, the PELRB held that fair share was a mandatory subject of bargaining as under NLRA precedent. The language of § 9(G) was subsequently amended under PEBA II to expressly state that "[t]h issue of fair shall be left a permissive subject of bargaining ...”
    - PEBA §9(G) provides that “fair share” shall be a permissive subject of bargaining. In contrast the State is obligated to bargain “dues deductions”, as a mandatory subject of bargaining. *See* §17(C). The Board found factual issues exist so as to preclude Summary Judgment with regard to whether proposed "union security" clauses may fairly be said to be squarely within the provisions of PEBA §17(C) or of some other recognized mandatory subject of bargaining, or if they include language that may be said to be within §9(G)'s permissive subject matter. If the union includes fair share language in its dues deductions proposals, then it calls into question whether a provision that would otherwise be a mandatory subject of bargaining remains so. *AFSCME Council 18 v. State of New Mexico,* 62-PELRB-2012.
    - As part of an interest arbitration award, the Arbitrator rejected a proposed indemnification clause wherein management sought to add to a Fair Share Article, changes to sick leave and vacation leave accrual rates, sick leave conversion payouts and other changes to the *status quo*. *Doña Ana County (Sheriff) and CWA, Local 7911*; FMCS Case #13-51332-1, Aug. 27, 2013.
    - Under the former law (pre-*Janus*) unions seeking to preserve or add to fair share provisions included in their contracts, they must do so with the understanding that such provisions are a permissive subject of bargaining pursuant to PEBA § 9(G). *AFSCME Council 18 and CWA, AFL-ClO, SEA v. State of New Mexico*; PELRB No.106-12.
    - Following the *Janus* decision, a separate suit was brought where the plaintiff sought retrospective relief for dues paid while a member of a trade union. Over the course of his employment, the plaintiff had signed three union membership agreements and due’s deduction authorizations. The court found in favor of the defendants stating that the signed agreements were binding documents that the plaintiff freely entered into on multiple occasions and the *Janus* case did not permit the plaintiff to renege on his contractual obligations. *See, Hendrickson v. AFSCME Council 18,* 992 F. 3d 950 - Court of Appeals, 10th Circuit 2021.
* **10-7E-10(A), [Local Board; created upon approval by the PELRB.]**
  + **Approval of content of local ordinances - Generally**
    - The PELRB has jurisdiction to review a local ordinance, "whether grandfathered or not: for compliance with PEBA. *City of Deming v. Deming Firefighters Local 4251*, 1 PELRB No. 2005 (March 31, 2005), aff'd *City of Deming v. Deming Firefighters Local 4251,* 2007-NMCA-069, 141 N.M. 686, 160 P.3d 595. (Overruled on other grounds).
    - Because a legislative enactment is entitled to a presumption of validity, the PELRB will presume that the absence of a proviso from the local ordinance does not imply denying statutory rights to any class of employees who are guaranteed them under PEBA. *AFSCME and Los Alamos County Firefighters v. County of Los Alamos*, 1 PELRB No.3 (Dec. 20, 1994).
    - The PELRB does not have the authority to pass on the constitutionality of local ordinances. *Santa Fe County and AFSCME,* 1 PELRB No.1 (Nov. 18, 1993).
    - So long as a lawful interpretation is reasonable, the Board will not read an unlawful interpretation into the words of an ordinance. *Santa Fe County and AFSCME,* 1 PELRB No.1 (Nov. 18, 1993).
    - The Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to-15 (1975), does not grant the district courts exclusive authority to determine the validity of a local labor ordinance. *Santa Fe County & AFSCME,* 1 PELRB No.1 *(*Nov*.* 18, 1993). *See also AFSCME and Los Alamos County Firefighters v*. *County of Los Alamos*, 1 PELRB No.3 (Dec. 20, 1994).
    - Being a home rule jurisdiction under Article X, Sections 5 and 6 of the New Mexico Constitution does not shield that employer from PELRB review of its local ordinance. *Santa Fe County and AFSCME,* 1 PELRB No.1 (Nov. 18, 1993).
  + **§ 10 Boards**
    - Section 10(A) expressly empowers the Board to approve or disapprove local collective bargaining boards “created by ordinance,” depending on whether the ordinance meets specified criteria for structure, tenure, appointment and payment of the board members. Section 10(A) also reflects the legislature's delegation of authority to the Board to determine whether the other provisions of a local bargaining ordinance comply with the state statute by stating that '[a] local board shall follow all procedures and provisions of the [PEBA] that apply to the [state] board unless approved by the state board.' (Emphasis added in Decision.) Thus, the Legislature has dear1y delegated to the Board the authority to determine whether provisions of a local public body's collective bargaining ordinance comply with the standards PEBA establishes for such ordinances, when a PPC filed with the Board challenges those provisions. *AFSCME and Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No.3 (Dec. 20, 1994).
    - The PELRB has jurisdiction and authority to review the content of § 10 local ordinances for
    - compliance with PEBA. *Santa Fe County and AFSCME,* 1 PELRB No.1 (Nov. 18, 1993). *See* also
    - *Board of County Commissioners of Otero County et al. v. State of New Mexico Public Employee*
    - *Labor Relations Board,* Case No. CV-93-187 (J. Leslie C. Smith) (Jul. 13, 1993)
    - (dismissing mandamus action against Board to enjoin it from hearing such cases) and
    - *AFSCME v. County of Santa Fe,* Case No. SF 93-2174 (J. Herrera) (Jul. 8, 1994) (upholding
    - the Board's decision in 1 PELRB No. 1).
  + **§ 26 Boards (Repealed, 2020)**
    - Petitions for writ of prohibition against the PELRB, related to its hearing a PPC that a §26(B) labor ordinance fails to meet the requirements of that section, will not be heard by the Supreme Court. *See City of Las Cruces v. Juan B. Montoya and PELRB,* Supreme Court of New Mexico, Case No. 31,629 (March 24, 2009).

**Note:** Although no reasoning or analysis was provided, the underlying briefing addressed thefact that both New Mexico Courts and the PELRB have routinely upheld the PELRB's authority to review local ordinances' compliance with PEBA, even where grandfathered; and that local boards grand fathered under §26(B) are subject to many more substantive requirements than §26(A) boards, and thus permit greater grounds for the PELRB's exercise of jurisdiction to review such ordinances. In the context of the 2020 amendments, this case and those that follow may stand for the proposition that the Board has ongoing authority to review local board rules and decision for conformance with the PEBA.

* + - The PELRB *may* review and invalidate portions of § 26(A) grandfathered ordinances that violate PEBA. *NEA v. Bernalillo,* 1 PELRB No. 17 (May 31, 1996).
    - After the neutral member of the City’s LMRB recused himself in a PPC the Mayor made an interim appointment with the result that management effectively controlled two of the three local board appointments. *See* Albuquerque Ordinance § 3-2-15(A) – (D). A union representing City employees filed a challenge to the City of Albuquerque’s § 26(A) grandfathered status with the PELRB on the ground that the local ordinance did not meet PEBA’s requirement for appointment of a neutral board. The PELRB denied the City’s motion to dismiss for lack of jurisdiction. The City won a writ of prohibition staying PELRB proceedings pending appeal. The Court of Appeals reversed the grant of the writ and denial of the motion to dismiss and the matter was remanded for further proceedings. *City of Albuquerque v. Juan B. Montoya and PELRB*, 2010-NMCA-100, 148 N.M. 930, 242 P.3d 497. In *City of Albuquerque v. Juan B. Montoya*, et al., 2012-NMSC-007, New Mexico’s Supreme Court construed PEBA §26(A) as it pertained to Albuquerque’s process for the appointment of interim members to its Labor-Management Relations Board. Citing to *City of Deming v. Deming Firefighters Local 4521*, 2007-NMCA-069, 141 N.M. 686, 160 P.3d 595 and to *The Regents of the University of New Mexico v. New Mexico Federation of Teachers and American Assoc. of University Professors*, 1998-NMSC-020, 125 N.M. 401, 962 P.2d 1236, *Montoya* re­iterates the basic proposition that PEBA §26(A) allows a public employer to preserve an existing collective bargaining system created prior to October 1, 1991, as long as the “system of provisions and procedures permits employees to form, join or assist a labor organization for the purpose of bargaining collectively through exclusive representatives”. With regard to the application of PEBA §10 to entities grandfathered under §26(A), the Supreme Court disagreed with the Court of Appeals’ holding that the Albuquerque Local Board’s process for selecting an interim board member ignored §10(B) but did not take issue with the application of §10(B) generally, even in the presence of a §26(A) grandfathered entity. The Montoya Court said quite plainly that NMSA §10­7E-10(A) requires that the local board be balanced in membership and therefore a neutral body and specifically references §10-7E-10(B) which requires a local board shall be composed of three members appointed by the public employer; one appointed on the recommendation of individuals representing labor, one appointed on the recommendation of individuals representing management and one appointed on the recommendation of the first two appointees. Following that analysis the Board concluded that where a local ordinance uses its Personnel Board together with the City council as the functional equivalent of State’s Labor Board, that ordinance does not meet the requirements of PEBA §10(B), does not meet the fundamental requirement of PEBA for ensuring balance and neutrality because representatives of labor have no recommendation for appointment to the board in any real sense and there exists the real possibility that management controls at least four of the five positions. See In re: *Raton Fire Fighters Association, IAFF Local 2378 v. City of Raton*, 3 PELRB 2013 (June 20, 2013).
  + **Continuing PELRB jurisdiction**
    - The PELRB does not infringe on a clear legal right of a public employer, and does not exceed its authority under PEBA, when it exercises jurisdiction to hear a matter after a local board had been approved but where the local board lacked board members and was not meeting for business. *Gallup-McKinley County Schools* v. *PELRB* and *McKinley County Federation of United School Employees Local 3313*, 2d Judicial Dist. Case No. CIV-2005-07443 (Nov. 23, 2005, J. Campbell) (denying School's Petition for Writ of Mandamus and Stay of Proceedings).

**Note:** In this case, it was undisputed that the local board lacked board members and was not meeting for business when the PPC was filed, but the Order does not reference these facts.

* + - If the local board is not fully functional and operational, the PELRB *may* exercise jurisdiction over a matter. *In the Matter of the Disqualification of Deputy Director Pilar Vaile, AFT v, Gadsden Independent School District (Gadsden),* Case No’s. 132-05 and 309-05 (oral ruling, Minutes, PELRB Board Meeting, August 19, 2005).
    - The Board will order the reinstatement and continued processing of a PELRB matter where the local board to which it was transferred was not yet in fact created or appointed and where the complainant alleges that the public employer has used the process of setting up a local board todelay the processing of pending matters. *AFSCME v. New Mexico State University,* 02-PELRB-2005 (June 22, 2005).
  + **Local board 's assumption of PELRB duties**
    - The PELRB shall transfer a matter to a local board when the local board is "fully functional and operational. A local board is "fully functional and operational" where all members of the local board have been appointed, it has promulgated rules and it is meeting and conducting business. *In the Matter of the Disqualification of Deputy Director Pilar Vaile, AFT v. Gadsden Independent School District (Gadsden).* Case No’s. 132-05 and 309-05 (oral ruling, Minutes, PELRB Board Meeting, August 19, 2005).
    - The Board found Respondent’s local Labor-Management Commission to be duly constituted and fully functional, citing to the New Mexico Supreme Court’s decision in *AFSCME v. Martinez and the State of New Mexico,* 2011-NMSC-018, No. 32,905 (2011) *supra.* Therefore, the Board did not have jurisdiction over the parties and the subject matter in three of the consolidated PPC’s alleging violations that would come under the jurisdiction of the local board. The Board found that it did have jurisdiction over three other consolidated PPC’s alleging violations of PEBA §19(G). With regard to those claims the Board held that the union did not meet its burden of proof needed to establish grounds for revocation of its approval of the local Board. *Northern Federation of Education Employees v. Northern New Mexico Community College, et al.* (July 2, 2012), upheld on appeal in First Judicial District Court Case No. D-101-CV-2012-02100.
* **10-7E-10(B), [Local board created]**
  + **Method of appointment**
    - New Mexico District Courts confirmed the Board’s authority under PEBA I to review the content of labor ordinances and resolutions, as part of the process of approving local boards. However, under PEBA II grandfathered ordinances enacted prior to October 1, 1991, no longer have to result provide “substantially equivalent” rights as provided under PEBA I. Rather, deference is paid to the very oldest grandfathered ordinances provided they extend collective bargaining rights to the same classes of employees as enjoyed those rights under PEBA, *See Gallup McKinley Schools*, PELRB Case No. 103-07 at 10.
    - In *City of Albuquerque v. Juan B. Montoya, et al.*, 2012-NMSC-007, New Mexico’s Supreme Court construed PEBA §26(A) (Repealed in 2020), as it pertained to Albuquerque’s process for the appointment of interim members to its Labor-Management Relations Board. Citing to *City of Deming v. Deming Firefighters Local 4521,* 2007-NMCA-069, 141 N.M. 686, 160 P.3d 595 and to *The Regents of the University of New Mexico v. New Mexico Federation of Teachers and American Assoc. of University Professors,* 125 N.M. 401, 962 P.2d 1236 (1998), *Montoya* re-iterates the basic proposition that PEBA §26(A) (Repealed in 2020), allows a public employer to preserve an existing collective bargaining system created prior to October 1, 1991, as long as the “system of provisions and procedures permits employees to form, join or assist a labor organization for the purpose of bargaining collectively through exclusive representatives”. With regard to the application of PEBA §10 to entities grandfathered under §26(A) (Repealed in 2020), the Supreme Court disagreed with the Court of Appeals’ holding that the Albuquerque Local Board’s process for selecting an interim board member ignored §10(B) but did not take issue with the application of §10(B) generally, even in the presence of a §26(A) (Repealed in 2020), grandfathered entity. The *Montoya* Court said quite plainly that NMSA §10-7E-10(A) requires that the local board be balanced in membership and therefore a neutral body and specifically references §10-7E-10(B) which requires a local board shall be composed of three members appointed by the public employer; one appointed on the recommendation of individuals representing labor, one appointed on the recommendation of individuals representing management and one appointed on the recommendation of the first two appointees. Following that analysis the Board concluded that where a local ordinance uses its Personnel Board together with the City council as the functional equivalent of State’s Labor Board, that ordinance does not meet the requirements of PEBA §10(B), does not meet the fundamental requirement of PEBA for ensuring balance and neutrality because representatives of labor have no recommendation for appointment to the board in any real sense and there exists the real possibility that management controls at least four of the five positions. *See In re: Raton Fire Fighters Association, IAFF Local 2378 v. City of Raton*, 3 PELRB 2013 (June 20, 2013).
    - A §26(B) (Repealed in 2020), local boards' member selection process must comply with the selection procedures stated in §10(B). A local ordinance does not comply with §10(B) where it provides that bargaining units and the city manager shall submit a list of up to three recommended individuals, but further provides "[h)owever, nothing contained herein shall mandate the mayor and city council to select from the nominations submitted by the bargaining units and the city manager." *IAFF Local 2362 v. City of Las Cruces,* 07-PELRB-2009 (July 6, 2009).
    - A § 10 local ordinance violates PEBA where it permits the County Council chairman to appoint an interim member of the local board. *AFSCME and Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No. 3 (Dec. 20, 1994),
    - A § 10 local ordinance violates PEBA where it requires that the union recommendation be from a certified union actively involved in representing employees In the County. *AFSCME and Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No. 3 (Dec. 20, 1994).
    - A § 10 local ordinance violates PEBA where it permits the City Council to appoint the third member if the labor and management representatives cannot agree within 30 days. *AFSCME and Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No.3 (Dec. 20, 1994).
    - Following the decision in *The Regents of the University of New Mexico v. New Mexico Federation of Teachers and American Assoc. of University Professors,* 98-NMSC-020, 125 N.M. 401 the Board held that where provisions of the City of Raton’s grandfathered ordinance do not meet the requirements of § 26(A) (Repealed in 2020), for grandfathered status, the particular provision shall be denied grandfathered status, not the ordinance as a whole. *In re: Raton Fire Fighters Association, IAFF Local 2378 v. City of Raton*, 3 PELRB 2013 (June 20, 2013).
    - *See also*, this Board’s decision in the consolidated *Northern New Mexico Community College* cases; PELRB No.’s 123-11, 124-11, 125-11, 130-11, 136-11 and 138-11, 61 PELRB 2012. July 2, 2012
    - Where the local ordinances’ definition of “supervisor” leaves out most of the criteria established by PEBA for testing whether a particular position is supervisory or not, including the rather basic criterion that a supervisor actually supervises someone it so broadly defines the term that it encompasses those who only occasionally assume supervisory or directory roles; or perform duties which are substantially similar to those of his or her subordinates, are “lead employees” and arguably includes those who merely participate in peer review or occasional employee evaluation programs. Therefore, it impermissibly excludes a class of employees entitled to bargaining rights under the PEBA. *In re: Raton Fire Fighters Association, IAFF Local 2378 v. City of Raton*, 3 PELRB 2013 (June 20, 2013).
    - Any provision of a grandfathered local ordinance that defines “supervisor,” “confidential employee” or “management employee” so broadly that it effectively excludes employees who would otherwise be entitled to bargain under PEBA will not be given grandfathered effect under PEBA §26. *In re: Raton Fire Fighters Association, IAFF Local 2378 v. City of Raton*, 3 PELRB 2013 (June 20, 2013).
    - Although the local ordinance contains a more expansive management rights reservation than the usual that reservation of management rights is expressly subject to other “restrictions contained in this section and the collective bargaining agreement and any provision of this Chapter”. Therefore, it is merely a general reservation of management rights and such general reservations do not operate to defeat the obligation to bargain collectively over wages, hours and working conditions established by contract or under a collective bargaining law to the extent those subjects constitute mandatory subjects of bargaining. Consequently, the management rights clause in question did not violate Section 10-7E-4(F) of the Act. *See In re: Raton Fire Fighters Association, IAFF Local 2378 v. City of Raton*, 3-PELRB-2013 (June 20, 2013).
    - *Northern Federation of Education Employees v. Northern New Mexico Community College, et al.* (July 2, 2012). Upheld on appeal in First Judicial District Court Case No, D-101-CV-2012-02100. The Board found Respondent’s local Labor-Management Commission to be duly constituted and fully functional, citing to the New Mexico Supreme Court’s decision in *AFSCME v. Martinez and the State of New Mexico,* 2011-NMSC-018, No. 32,905 (2011) *supra.* Therefore, the Board did not have jurisdiction over the parties and the subject matter in three of the consolidated PPC’s alleging violations that would come under the jurisdiction of the local board. The Board found that it did have jurisdiction over three other consolidated PPC’s alleging a violations of PEBA §19(G). With regard to those claims the Board held that the union did not meet its burden of proof needed to establish grounds for revocation of its approval of the local Board.
  + **Duty of Fair Representation (DFR) claims**
    - Local Boards lack authority under § 11(E) to either award monetary damages to an aggrieved union member for a union's breach of its duty of fair representation, or to order the Union to reinstate an employee allegedly improperly terminated as a result of the Union's breach. Therefore, claims for breach of the duty to fairly represent bargaining unit members cannot be brought before a Labor Relations Board and must instead be filed in District Court. *Callahan v. New Mexico Federation of Teachers-TVI,* 2006-NMSC-010, 139 N.M. 201, 131 P.3d 51.
    - Following the Supreme Court decision in *Callahan v. N.M. Fed'n of Teachers-TVI*, 2006-NMSC-010,the matter came before the Court of Appeals a second time in *Callahan v. NM Federation of Teachers-TVI,* 2010-NMCA-004, 147 N.M. 453, 224 P.3d 1258,. The Court of Appeals reversed the Summary Judgment in favor of the Union and remanded for trial on Plaintiffs' claims against the Union; however, summary judgment in favor of the International Union was held to be appropriate.
    - Both Callahan I and Callahan II reiterated the holding in *Jones v. International Union of Operating Engineers,* 1963-NMSC-118, 72 N.M. 322, 330-32, 383 P.2d 571, 576-78, that a union member stated a claim for relief for breach of the duty of fair representation when he pleaded that the union had acted arbitrarily, in bad faith, and in violation of its trust when it refused to press the member's grievance to arbitration and that that mere negligence will not state a claim for breach of the duty of fair representation.
    - In *Akins v. United Steel Workers of America,* 2010-NMSC-031, 148 N.M. 442, 227 P.3d 744 the New Mexico Supreme Court was asked to limit a union’s liability for breach of a DFR by imposing a *per se* exclusion of punitive damages much as the U.S. Supreme Court has done for similar actions against federally regulated labor unions. The Supreme Court declined to do so and instead underscored the public policy served by punitive damages.
    - When the Albuquerque Police Officers Association settled a prohibited practices complaint with the City of Albuquerque on behalf of four police sergeants, it did not include non-dues paying members of the bargaining unit in the settlement and was sued for breach of its duty of fair representation to Appellants. Summary Judgment was granted by the District Court in favor of the Union which was reversed on appeal. It is for a jury to resolve the question of whether Appellants were precluded from recovery by a particular APOA bylaw and whether APOA's actions breached its duty of fair representation, whether Appellants suffered damages, and whether APOA's actions were the proximate cause of those damages. *See Granberry v. Albuquerque Police Officers Ass’n*., , 2008-NMCA-094, 144 N.M. 595, 189 P.3d 1217. See *also Howse v. Roswell Independent School Dist.,* , 2008-NMCA-095, 144 N.M. 502, 188 P.3d 1253.
* **10-7E-13(A), [Appropriate bargaining units-designation of.]**
  + **Generally**
    - The Board is charged with the statutory duty of designating appropriate bargaining units for collective bargaining. There is no absolute rule of law as to what constitutes an appropriate bargaining unit and courts will defer to the Board’s decision on what constitutes an appropriate bargaining unit if that determination is supported by substantial evidence and otherwise in accordance with the law. *San Juan College v. San Juan College Labor Management Relations Board*, 2011-NMCA-117, 267 P.3d 101.
    - Community of interest is determined on a case-by-case basis. *Public Safety Officers and Town of Bernalillo,* 1 PELRB No. 21 (June 3, 1997).
    - Unit determinations, such as statutory exclusions, must be based on actual duties performed rather than on written job descriptions or Standard Operating Procedures manuals, which merely reflect expectations that may not materialize or surface. *In re: McKinley County Sheriff's Association Fraternal Order of Police and McKinley County,* 1 PELRB No. 15 (Dec. 22, 1995).
    - Basing unit determinations on expectations without regard to the actual duties performed could result in the denial of statutory rights to classes of employees, in violation of *County of Santa Fe,* 1 PELRB No. 1 (1993). *In re: McKinley County Sheriff's Association Fraternal Order* of *Police* and *McKinley County,* 1 PELRB No. 15 (Dec. 22, 1995).
    - Decisions from other jurisdictions cannot substitute for performing the community of interest analysis under § 13(A). *Firefighters and City of Santa* Fe, 1 PELRB No. 6 (Jan. 19, 1995).
    - Unit determinations are fact specific and must be made on a case-by-case basis. *NEA-Belen and Belen Federation* of *School Employees and Belen Consolidated Schools,* 1 PELRB No. 2 (May 13, 1994).
    - The occupational groups listed in § 13(A) are advisory as opposed to mandatory directives for configuring appropriate units. *NEA-Belen and Belen Federation of School Employees and Belen Consolidated Schools,* 1 PELRB No. 2 (May 13, 1994).
    - It was not the legislature's intent in drafting § 13(A) that only the listed occupational groups would constitute appropriate units. *NEA-Belen and Belen Federation of School Employees and Belen Consolidated Schools,* 1 PELRB No. 2 (May 13, 1994).
    - Where a labor organization's petitioned-for unit is appropriate, an alternative proposal or configuration proffered by an employer will not be substituted. *NEA-Belen and Belen Federation of School Employees and Belen Consolidated Schools,* 1 PELRB No. 2 (May 13, 1994).
  + **Board's duty to make unit determinations**
    - A hearing examiner does not err by failing to consider whether a disputed position is an excluded confidential employee if the employer did not raise that defense at the representation hearing. *In re: Communications Workers of America, Local 7911 and Doña Ana County,* 1 PELRB No. 16 (Jan. 2, 1996).
    - It is the Board's responsibility to designate *an* appropriate unit, not necessarily the most comprehensive or most appropriate unit. *NEA-Belen and Belen Federation of School Employees* and *Belen Consolidated Schools,* 1 PELRB No. 2 (May 13, 1994).
    - If the Board were to determine the most appropriate bargaining unit, it would result in an untenable situation where the Board unduly interfered in the affairs of public employers and labor organizations. Therefore, the Board should maintain a posture of noninterference, except where a proposed bargaining unit is clearly inappropriate. *NEA-Belen and Belen Federation of School Employees and Belen Consolidated Schools,* 1 PELRB No.2 (May 13, 1994).
    - A local ordinance that unilaterally designates certain positions as being statutorily excluded from its coverage usurps the function of the Board and/or local board to determine appropriate unit composition. *AFSCME and Los Alamos County Firefighters v. County of Los Alamos,* 1 PELRB No. 3 (Dec. 20, 1994).
    - In *DEA & Deming Public Schools,* PELRB No’s. 304-17 and 305-17, the labor board concluded that the “[c]ontinued recognition of the existing wall-to-wall bargaining unit is mandated by NMSA 1978, Section 10-7E-24(A) which allows bargaining units established prior to July 1, 1999 to continue to be recognized as appropriate bargaining units” and “[t]he Board’s rule 11.21.2.37 NMAC expressly exempts bargaining units under Section [10-7E-24(A)] ... from being subject to unit clarification except in limited circumstances not applicable here.”
    - In *AFSCME, Council 18 v. NM Department of Workforce Solutions*, PELRB No. 102-17, 11-PELRB-2017. Hearing examiner granted the Department’s Motion for a directed verdict as to the § 10-7E-19(F) and § 10-7E-19(H) claims. Additionally, the Union did not meet its burden of proof regarding whether denial of pay increases in connection with the pay band adjustment constituted a failure to bargain or a breach of the contract. Directed verdict was denied, however, as to whether NMDWS increased performance measures without bargaining. AFSCME appealed the Board’s Order affirming the Directed Verdict to the District Court and NMDWS appealed the Board’s Order concluding that it violated § 10-7E-19(F) and § 10-7E-19(H) when the Employer increased performance measures without bargaining. The District Court affirmed the Board’s conclusion that the number of inspections employees were required to perform each month was a term or condition of employment and a mandatory subject of bargaining under the PEBA and that NMDWS violated § 10-7E-19(F) when it unilaterally changed the required number of inspections.
  + **Community of interest standards**
    - There is sufficient community of interest to support the accretion of Interpreters and Dieticians into an existing unit of nurses and professional employees where they work under the same discipline rules, supervision and holiday schedules, work at the same location, get paid the same day, participate equally in the process of patient care, interact and work closely with the members of the existing unit to carry out the hospital's core function of patient care, and their positions require a certain amount of medical related training. *National Union of Hospital and Health Care Employees, District No.* 1199 *v. UNMH,* 03-PELRB-2005 (Oct. 19, 2005).
    - Similarities between employees regarding their hourly compensation, work hours, benefits, lack of history of collective bargaining and, to some degree, supervision, are not sufficient by themselves to create a community of interest, where such commonalities are shared by all of the employees and are not unique to the petitioned-for group. *USWA and* Gila *Regional Medical Center and Grant County Board of County Commissioners,* 1 PELRB No. 14 (Nov. 17, 1995).
    - Operating Room Technicians lack a community of interest with service, maintenance, and clerical employees because they carry pagers; remain on call for emergency surgeries; have different training and skills; actually assist the surgeons during the operations and are expected to anticipate what to do; are ultimately responsible to the OR Director; have limited daily contact with other proposed bargaining unit personnel; and there is no integration of work functions between OR Techs and other petitioned-for employees. *USWA and Gila Regional Medical Center and Grant County Board* of *County Commissioners,* 1 PELRB No. 14 (Nov. 17, 1995).
    - Inclusion of Operating Room Technicians in a service, maintenance and clerical bargaining unit is not appropriate, even though some members of petitioned-for unit share a title of "technician: without facts suggesting more parallels regarding their qualifications, training and actual job functions. *USWA and Gila Regional Medical Center and Grant County Board* of *County Commissioners.* 1 PELRB No. 14 (Nov. 17, 1995).
    - The fact that Operating Room Technicians are not licensed or certified is not a sufficient justification for their inclusion into a service, maintenance and clerical bargaining unit, where the OR Techs' job requires a greater degree of skill and use of independent judgment and the position is a technical one. *USWA and Gila Regional Medical Center and Grant County Board of County Commissioners,* 1 PELRB No. 14 (Nov. 17, 1995).
    - An appropriate bargaining unit of police officers, investigators and telecommunicators does not include administrative secretaries, because there is no clear and identifiable community of interest between the two types of positions to justify varying from the normal designations under PEBA, or the NLRB precedent of treating safety officer and clerical employees separately. Specifically, clerical employees are not certified in law enforcement; they do not wear a uniform; they perform clerical duties; they do not work the same shifts as officers and telecommunicators and are not engaged in the same or even similar skills; the record does not show a great deal of contact between these employees and other members of the proposed bargaining unit; and the clerical employees' impact upon the primary function of the department is tangential. *New Mexico State University Police Officers Association and New Mexico State University,* 1 PELRB No. 13 (June 14, 1995).
    - Community of interest shall be analyzed under the nine factors listed in *Kalamazoo Paper Box Corp*., 136 NLRB 134, 49 LRRM 1715 (1962). These include: (1) differences in method of wages or compensation; (2) differences in work hours; (3) differences in employment benefits; (4) separate supervision; (5) degree of dissimilar qualifications, training and skills; (6) differences in job functions and amount of working time spent away from the employment or plant *situs*; (7) the infrequency or lack of contact with other employees; (8) the lack of integration with the work. functions of other employees, or interchange with them; and (9) the history of collective bargaining. No single factor will be conclusive. *NEA-Belen and Belen Federation of School Employees and Belen Consolidated Schools,* 1 PELRB No. 2 (May 13, 1994).
    - 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. *NEA-Belen and Belen Federation of School Employees* and *Belen Consolidated Schools,* 1 PELRB No. 2 (May 13, 1994).
    - The statutory phrase 'related personnel matters· is part and parcel of community of interest rather than a separate factor to be considered. *NEA-Belen and Belen Federation of School Employees and Belen Consolidated Schools,* 1 PELRB No. 2 (May 13, 1994).
  + **Efficient administration of government**
    - The principle of efficient administration of government, which must be considered when determining an appropriate bargaining unit, requires consideration of stability in government operations. *NEA-Belen and Belen Federation of School Employees and Belen Consolidated Schools,* 1 PELRB No. 2 (May 13, 1994).
    - The maintenance of stability in government operations may outweigh a group of employees· desire to be placed in a separate unit where the creation of such a unit would lead to fragmentation. *NEA-Belen and Belen Federation of School Employees and Belen Consolidated Schools,* 1 PELRB No. 2 (May 13, 1994).
    - Based on the principle of efficient administration of government, the PELRB adopts an anti-fragmentation policy to avoid unnecessary and needless proliferation of bargaining units, and resultant instability in government operations. *NEA-Belen and Belen Federation of School Employees and Belen Consolidated Schools,* 1 PELRB No. 2 (May 13, 1994). *See also United Steel Workers Association and New Mexico State University,* Case No. 55-93(O) (No separate PELRB No. assigned) (Aug. 1994).
    - The Board's anti-fragmentation policy is not violated where employers and labor organizations have mutually agreed upon multiple units without invocation of the Board. Such decisions reflect self-determination and efficient administration of government as appropriately determined by those at the operational level of the labor-management relationship. *NEA-Belen and Belen Federation* of *School Employees and Belen Consolidated Schools,* 1 PELRB No. 2 (May 13. 1994).
  + **Local ordinances, equivalent unit determination procedures**
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