

# 10-PELRB-2026

## STATE OF NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

Clovis Firefighters Association,  
IAFF Local 3602

Petitioner,

and

PELRB No. 321-25

City of Clovis,

Respondent.

### ORDER

**THIS MATTER** comes before the Public Employee Labor Relations Board at its regularly scheduled meeting on April 7, 2026, upon a request for review of the Hearing Examiner's Report and Recommended Decision issued in this case pursuant to NMAC 11.21.2.22. Having reviewed the record, heard the arguments of the parties, and being otherwise sufficiently informed, the Board finds and orders as follows:

1. The Hearing Examiner is reversed; the Board was compelled by the use of the word "shall" in Section 24 of the PEBA to recognize IAFF Local 3602 as the incumbent exclusive representative of the incumbent bargaining unit;
2. the employer is ordered to recognize IAFF Local 3602 as the incumbent exclusive representative; and
3. the parties are ordered to bargain over who is included in the bargaining unit.

DocuSigned by:

*Nan Nash*

DEE4A440B261405...

Date: 4/13/2026

Nan Nash, Board Chair

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

**In re:**

**Clovis Firefighters Association,  
IAFF Local 3602**

**Petitioner,**

**and**

**PELRB No. 321-25**

**City of Clovis,**

**Respondent.**

**HEARING OFFICER'S REPORT AND RECOMMENDED DECISION**

This matter comes before Matthew Huchmala, designated as the Hearing Officer in this case, on a Petition filed by the Clovis Firefighters Association, IAFF Local 3602, for certification as the exclusive representative for collective bargaining of a group of employees of the City of Clovis Fire Department.

**PROCEDURAL HISTORY:**

Petitioner filed a petition on July 23, 2025 seeking certification as the exclusive bargaining representative for a bargaining unit comprised of all full-time, paid employees engaged in fire fighting, emergency medical or rescue service activities, or related services: Firefighter, Driver Operator, Lieutenant, Captain, and Battalion Chief; Non-firefighter Paramedics, EMT-I, and EMT-B. Specifically excluded from the petitioned-for unit were the Fire Chief, Deputy Fire Chief, and Probationary Firefighters. On July 31, 2025, staff determined the Petition was adequate and requested a list of employees in the petitioned-for unit and each party's statement of any issues of unit inclusion or exclusion that may be in dispute and any other issue that could affect the outcome of the proceeding within ten business days. The City responded on August 8, 2025, objecting to the inclusion of Lieutenants, Captains, and Battalion Chiefs as statutorily

excluded management, supervisory, or confidential employees, and questioning the legitimacy of the petitioner as a labor organization.

A status and scheduling conference was held on September 5, 2025, where a hearing was set for October 8, 2025. On October 6, 2025, two days before the hearing, Respondent filed a Motion to Dismiss, reversing their position on the legitimacy of the Petitioner, asserting that the Petition was improper because the Petitioner had already been certified as the exclusive representative and should have filed a petition for recognition as the incumbent labor organization under NMSA 10-7E-24. Petitioner filed a response to the Motion on October 7, 2025. The hearing was held on October 8, 2025, and at the end of the day was continued to November 5, 2025. Each party submitted closing briefs on December 9, 2025. All parties hereto were afforded a full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence, and to argue orally.

On the entire record in this case and from my observation of the witnesses and their demeanor on the witness stand, and upon substantive, reliable evidence considered along with the consistency and inherent probability of testimony, I make the following Recommended Decision.<sup>1</sup>

## **MOTION TO DISMISS**

As a threshold issue, I must rule on the Motion to Dismiss. Based on the testimony of witnesses and other evidence presented by the parties, I make the following findings of fact relevant to the Motion:

---

<sup>1</sup> Respondent suggests, based on hearsay testimony, recusal of the hearing examiner is appropriate because the Union was “informed...the Board did not have any records of the Union despite the Board having previously certified the Union as the exclusive representative, resulting in clear misinformation being provided [by the hearing examiner]” These allegations are not supported by the facts or evidence. The Union she refers to was allegedly certified in 1995. The word allegedly is used because no Certification of Representation for the Union was ever produced. It can be inferred from the 1997 CBA attached to the Motion to Dismiss that a unit was established and an exclusive representative certified, but not when or by whom it was certified. Occurring sometime prior to 1997, the certification took place long before this Board came into existence on the effective date of the second Public Employee Bargaining Act (PEBA II), July 1, 2003. This Board does not possess any records of the cases arising from PEBA I. Furthermore, given the absence of the original certification in the record, it is a possibility that the certification originated in a local board created under NMSA 10-7D-10. Consequently, the Union was not provided ‘misinformation’ as alleged in the Respondent’s Closing Brief. It was accurately reported that this Board had no record of a bargaining unit at Clovis Fire Department. In any case, aside from the Respondent’s passing mention of it in the Closing Brief, no request or motion for recusal has been filed, and I decline to do so *sua sponte*.

1. The Respondent is a Public Employer as defined in NMSA 10-7E-4(R).
2. The employees at issue are Public Employees as defined by NMSA 10-&E-4(Q).
3. There was a labor organization certified to represent firefighters in Clovis in 1997, which to avoid confusion, I will refer to as 3602(I).
4. 3602(I) had ceased any meaningful representation of the bargaining unit by September of 1999.
5. The Internation Association of Firefighters (IAFF) revoked the charter of 3602(I) in May of 2003, at which point it ceased to exist altogether.
6. Petitioner is a new, recently created labor organization, which I shall refer to as 3602(II), to which the IAFF assigned the same local number.

For the reasons set forth below, Respondent's Motion is DENIED.

I begin my analysis by noting that there are two different (although very similar) statutes relevant to this case. The first Public Employee Bargaining Act (NMSA §§10-7D-1 et seq., PEBA I) was enacted in 1992 and was effective until July 1, 1999. The current Public Employee Bargaining Act (NMSA §§ 10-7E-1 et seq., PEBA II) became effective on July 1, 2003; it created this Board and remains effective today. One of the stated purposes of PEBA II is "to guarantee public employees the right to organize and bargain collectively with their employers." (NMSA §10-7E-2). These rights are further articulated in Section 5 of the Act 'Rights of Public Employees': "Public employees, other than management employees and confidential employees, may form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint or coercion..." (NMSA 10-7E-5(A)).

Respondent argues in its Motion and subsequent briefing that the Petitioner was recognized by the City as the exclusive representative of a bargaining unit on June 30, 1999, and the instant Petition for recognition is improper and should be dismissed because Petitioner should have filed a Petition for

recognition of their incumbency status under §24 of PEBA II and NMAC 11.21.2.36. Section 24, the so-called grandfather clause, states:

A labor organization that was recognized by a public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999 shall be recognized as the exclusive representative of the unit on the effective date of the Public Employee Bargaining Act; provided, however, that the public employer shall not enter into a new collective bargaining agreement pursuant to this subsection unless the labor organization demonstrates majority support to the public employer pursuant to Section 14 [10-7E-14 NMSA 1978] of the Public Employee Bargaining Act. A labor organization which attempts and fails to show majority support shall no longer be recognized as the exclusive bargaining representative of that unit. (NMSA §10-7E-24(B))

NMAC 11.21.2.36 creates a procedure by which incumbent labor organizations could apply for recognition of their status as the incumbent granted by §24 of the ACT. Respondent's argument fails for two reasons.

First, as noted above, Respondent conflates two separate labor organizations. 3602(I), the labor organization recognized by the employer on June 30, 1999, had ceased effectively representing the bargaining unit by September 1999, and had ceased to exist at all by May 2003, when its charter was revoked by the IAFF. The Petitioner is a new labor organization, so the main premise of Respondent's argument that in "1995, the Clovis Firefighters Association, IAFF Local 3602, (hereinafter "Union"), which is the same Petitioner in the instant matter, was certified by the Board as the exclusive representative of a bargaining unit" is not true. (Respondent's closing brief). That the Petitioner in this case has the same name and was given the same local number from the IAFF does not make it the same labor organization that was recognized by the employer in 1999. As noted above, the employees at issue here are public employees and have the right to organize for collective bargaining through representatives of their choosing. In exercising this right, they could have given their labor organization a different name, or chosen to affiliate with a different national organization, or the IAFF could have given them a different local number or refused to grant them another charter. It is only through a string of coincidences that Petitioner has the same name as

the labor organization recognized in 1999. Because it is based on a false premise, the Respondent's argument must fail.

Second, §24 of the Act cannot be reasonably construed to apply to labor organizations that were defunct or non-existent on the effective date of PEBA II. When construing a statute, the “primary goal is to ascertain and give effect to the intent of the Legislature.” (State v. Nick R., 2009-NMSC-050, at ¶11). Additionally, a tribunal should “not be bound by a literal interpretation of the words if such strict interpretation would defeat the intended object of the Legislature...If adherence to the literal use of the words would lead to injustice, absurdity, or contradiction, the [tribunal] should [interpret] the statute according to its obvious spirit or reason” (State v. Adams, 2022-NMSC-008, at ¶16). Here, we have a clear statement of legislative intent in §2 and §5 of the Act. Applying §24 as the Respondent suggests would thwart that intent. As found above, 3602(I) had ceased to exist in May 2003, and on July 1, 2003, PEBA II granted the employees of Clovis Fire Department the right to organize for collective bargaining. If, as Respondent urges, 3602(I) was recognized as the exclusive representative on the effective date of the Act, the employees would effectively be stripped of that right. 3602(I) could not represent them and they would have had no way of choosing a different representative because the usual methods of changing an exclusive representative (i.e. disclaimer or decertification of the existing representative) were not available to them. 3602(I) could not file a disclaimer of interest because it was not extant anymore, and no decertification petition could be filed because §16 of PEBA II only grants “[a] member of a labor organization or the labor organization itself” the ability to initiate a Decertification Petition. The labor organization, having ceased to be, could not file such a petition itself, and no member could do it because, having ceased to be, it would necessarily have no members. So recognizing 3602(I) as the exclusive representative of a unit of employees of the Clovis Fire Department on July 1, 2003 (the effective date of the Act) would thwart the stated purpose of PEBA II because those employees, having a non-existent representative and no way to change it,

would not be able to bargain collectively with their employer. For the foregoing reasons, the Respondent's Motion to Dismiss is DENIED.

I also note that the disposition of the Motion to Dismiss is largely moot. Even supposing, for the sake of argument, that Petitioner is the same labor organization that was recognized in 1999, dismissal of the Petition would not be the appropriate response. Requiring the Petitioner to re-file a separate Petition would not serve judicial economy. As noted above, an incumbent labor organization can gain recognition of its status by a demonstration of majority support, so the appropriate remedy would be to administratively convert the Petition for Certification submitted with along with a showing of interest to a Petition for Recognition as an Incumbent Labor Organization/Clarification and take the showing of interest as the demonstration of majority support required by §24 of the Act. So, in any event (Petition dismissed and re-filed, Petition converted, or Motion denied) we would end up in the same place: having to determine an appropriate bargaining unit.

### **APPROPRIATE BARGAINING UNIT**

The original Petition sought to include the positions of Firefighter, Driver Operator, Lieutenant, Captain, and Battalion Chief; Non-firefighter Paramedics, EMT-I, and EMT-B. The Employer objected to the inclusion of Lieutenants, Captains, and Battalion Chiefs as statutorily excluded management, or supervisory. In its Closing Brief, the Union acknowledged that Battalion Chiefs and the Training Captains were statutorily excluded and withdrew those positions from its Petition, leaving only the positions of Lieutenant and the remaining Captains (Fire Marshall, Maintenance, and EMS) in dispute.

Based on the testimony of witnesses and other evidence presented by the parties, I make the following findings of fact relevant to the determination of an appropriate bargaining unit:

7. There was a bargaining unit of Clovis Fire Department employees recognized on June 30, 1999.
8. Lieutenants do not spend a majority of their time performing supervisory duties.

9. Lieutenants are not primarily engaged in executive or management functions.
10. Fire Marshall Captains do not spend a majority of their time performing supervisory duties.
11. Fire Marshall Captains are not primarily engaged in executive or management functions.
12. Maintenance Captains have do not spend a majority of their time performing supervisory duties.
13. Maintenance Captains are not primarily engaged in executive or management functions.
14. EMS Captains do not spend a majority of their time performing supervisory duties.
15. EMS Captains are not primarily engaged in executive or management functions

### **Section 24(A) of PEBA II**

Section 24(A) states that “Bargaining units established prior to July 1, 1999 shall continue to be recognized as appropriate bargaining units for the purposes of the Public Employee Bargaining Act.” While no evidence of the bargaining unit at the Clovis Fire Department prior to June 1, 1999 was introduced at the hearing, the testimony of the Chief that there was a prior bargaining relationship suggests that the description of the bargaining unit in the CBA attached to Respondent’s Motion to Dismiss can be relied upon, given the absence of any evidence to the contrary, and that that unit is an appropriate bargaining unit by operation of §24(A).

However, that description is of the old and disfavored ‘wall-to-wall’ variety that includes all employees unless they fall into one of the statutorily excluded groups, and the current Petition seeks to represent specified positions. Furthermore, just because a certain unit has been deemed appropriate does not mean it is the only appropriate unit. (See NEA-Belen and Belen Federation of School Employees and Belen Consolidated Schools, 1 PELRB No. 2, interpreting a similar provision of PEBA I). As the Petitioner does not seek to represent the unit recognized in 1999, the propriety of the petitioned-for unit must be determined.

### **Lieutenants**

Respondent argues that Lieutenants should be excluded from the bargaining unit because they are supervisors as defined by the Act and are therefore barred from inclusion in an appropriate bargaining unit by §13(C) of the Act. A supervisor, as defined by the Act “means an employee who devotes a majority of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees and who has the authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively, but "supervisor" does not include an individual who performs merely routine, incidental or clerical duties or who occasionally assumes a supervisory or directory role or whose duties are substantially similar to those of the individual's subordinates and does not include a lead employee or an employee who participates in peer review or occasional employee evaluation programs.” (NMSA §10-7E-4(I)). Here, the greater weight of evidence indicates that Lieutenants do not devote a majority of their work time to supervisory duties. All but one of the Lieutenants who provided testimony said they only spent about 20% of their time directly supervising other employees, with the rest of their time spent similarly to their subordinates. Because the definition is conjunctive, not disjunctive (uses *and* not *or* between the elements—devotes...directs...*and*...has the authority), failing to meet the first part of the definition is enough to disqualify Lieutenants as supervisors and an analysis of their direction of other employees and authority in hiring and discipline is not necessary. Therefore, I find and conclude that Lieutenants are not supervisors as defined by the Act.

Respondent also argues that Lieutenants are management employees as defined by the Act and §13(C) bars their inclusion in an appropriate bargaining unit. The Act defines a ‘management employee’ as “an employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering or effectuating management policies. An employee shall not be deemed a management employee solely because the employee participates in cooperative decision-making programs or whose fiscal responsibilities are routine, incidental or clerical.” (NMSA §10-7E-4(N)). Here, as noted above, Lieutenants spend a majority of their time performing work similar to their subordinates, so

they are not *primarily* engaged in executive and management functions. This definition is also conjunctive, so further analysis of Lieutenants' responsibility in regard to policy is unnecessary. Therefore, I find and conclude that Lieutenants are not management employees as defined by the Act.

Section 13(C) also bars confidential employees from inclusion in an appropriate bargaining unit. However, as the Respondent did not raise the issue, no analysis is necessary. (See CWA & Doña Ana County, 1 PELRB No. 16 (1996), interpreting a similar provision of PEBA I).

Therefore, because Lieutenants are not supervisors or management employees under the Act, and no objection on the ground that they are confidential employees has been raised, I find and conclude that their inclusion in the bargaining unit is not barred by §13(C) of the Act.

### **Fire Marshall Captain**

Respondent asserts that the position of Fire Marshall Captain is supervisory and/or managerial and therefore cannot be included in an appropriate bargaining unit. The Fire Marshall Testified that he spends the vast majority of his time conducting fire code inspections and preparing the associated reports on his own. Because there are many hundreds of businesses that need inspection, other employees of all ranks can elect to aid in this endeavor if they meet certain qualifications. The Fire Marshall Captain directs these inspectors about which businesses to inspect, but their participation is not obligatory, and these other employees conduct the inspections on their own. Even considering the direction of these other inspectors, Fire Marshall Captains do not spend a majority of their work time conducting supervisory duties. As noted above, further analysis is not necessary to find that they are not supervisors, so therefore, I find and conclude that Fire Marshall Captains are not supervisors as defined by the Act.

In regard to their managerial status, Fire Marshall Captains are primarily engaged in fire code inspections, not executive and management functions. As noted above, this is enough to exclude them from 'management employees' as defined by the Act and no further analysis is necessary. I find and conclude that

Fire Marshall Captains are not management employees as defined by the act. As with the Lieutenants, Respondent did not raise the issue of their confidential status so no analysis is necessary.

Therefore, because Lieutenants are not supervisors or management employees under the Act, and no objection on the ground that they are confidential employees has been raised, I find and conclude that their inclusion in the bargaining unit is not barred by §13(C) of the Act.

### **Maintenance Captain**

Respondent asserts that the position of Maintenance Captain is supervisory and/or managerial and therefore cannot be included in an appropriate bargaining unit. The Maintenance Captain testified that he spends the majority of his time performing maintenance or repairs on fire fighting equipment so that the other firefighters will be properly equipped to respond when a call comes in. From this I can infer that the Maintenance Captain does not spend a majority of his work time supervising other employees. I therefore find and conclude that Maintenance Captain does not meet the definition of supervisor under the Act.

I can also infer that the Maintenance Captain is primarily engaged in maintenance of the Department's equipment, not executive or managerial functions. I therefore find and conclude that Fire Maintenance Captain does not meet the definition of management employee under the Act. As with the Lieutenants and the Fire Marshall Captain, Respondent did not raise the issue of their confidential status so no analysis is necessary.

Therefore, because Maintenance Captains are not supervisors or management employees under the Act, and no objection on the ground that they are confidential employees has been raised, I find and conclude that their inclusion in the bargaining unit is not barred by §13(C) of the Act.

### **EMS Captain**

Respondent asserts that the position of EMS Captain is supervisory and/or managerial and therefore cannot be included in an appropriate bargaining unit. The EMS Captain testified that he spends about half of his time reviewing reports from EMS calls for accuracy and completeness and a significant

portion of the remaining time checking and maintaining EMS supplies. As this takes up a majority of his time, I can infer that EMS Captains do not spend a majority of their work time on supervisory duties and are primarily engaged in reviewing reports and maintaining supplies. I therefore find and conclude that EMS Captain does not meet the definition of supervisor under the Act. Because reviewing reports and maintaining supplies are not executive or management functions, I find and conclude that EMS Captain does not meet the definition of management employee under the Act. As with the other disputed positions, Respondent did not raise the issue of their confidential status so no analysis is necessary.

Therefore, because EMS Captains are not supervisors or management employees under the Act, and no objection on the ground that they are confidential employees has been raised, I find and conclude that their inclusion in the bargaining unit is not barred by §13(C) of the Act.

### **Community of Interest**

Section 13(A) of the Act requires that the employees in an appropriate bargaining unit share a “clear and identifiable communities of interest in employment terms and conditions and related personnel matters among the public employees involved.” This Board has adopted the multi-factor test from *Kalamzoo Paper* (136 NLRB 134). The factors to consider are (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 is dispositive, and the fragmentation or proliferation of bargaining units is disfavored to ensure the efficient administration of government. (see *NEA-Belen & Belen Schools*, 1 PELRB No.2, interpreting a similar provision of PEBA I). Here, Lieutenants work in close contact and have identical shifts and work locations as other firefighters; they have similar qualifications, training and skills, and spend a majority of their time engaged in the same work. I therefore find and

conclude that the Lieutenants share sufficient community of interest with the other petitioned-for employees so that their inclusion would not render the bargaining unit inappropriate.

The three types of Captains do not work the same shifts as the other petitioned-for employees and are in a different band of the pay scale. However, they exist within the same command structure, have similar qualifications, training and skills, and their functions are closely integrated with those of the other firefighters: the Fire Marshall Captain's work helps ensure that there are fewer fires to respond to; the Maintenance Captain ensures that the equipment will be functional when a call does come in; and the EMS Captain ensures that the responses to medical emergencies will have the appropriate supplies and are documented correctly.

Because I have found that the Captains at issue are not barred from inclusion in a bargaining unit because of their supervisory, managerial or confidential status, and they have expressed their desire to organize for collective bargaining, they have a right to be included in a bargaining unit. Creating a separate unit for the Captains would result in the fragmentation or proliferation of units at the Department. I therefore find and conclude, considering the balance of the *Kalamazoo* factors and the aversion to the fragmentation or proliferation of bargaining units, that the Fire Marshall, Maintenance, and EMS Captains share sufficient community of interest with the other petitioned-for employees such that their inclusion would not render the bargaining unit inappropriate.

## **CONCLUSION**

Because the petitioned for employees (excepting the positions of Battalion Chief and Training Captain which were withdrawn) are not supervisors or management employees or confidential employees and they share a community of interest, the positions of Firefighter, Driver Operator, Lieutenant, Fire Marshall Captain, Maintenance Captain, EMS Captain, and Non-firefighter Paramedics, EMT-I, and EMT-B comprise an appropriate bargaining unit. The Employer is ordered to provide PELRB staff an updated

employee list containing the names of the employees holding those positions in accordance with NMAC 11.21.2.12, so that we may proceed with a determination of majority support.

Issued, Friday, January 16, 2026.

A handwritten signature in blue ink that reads "Matthew Huchmala". The signature is written in a cursive style and is positioned above a horizontal line.

Matthew Huchmala  
Hearing Officer  
Public Employee Labor Relations Board  
2929 Coors Blvd. N.W., Suite 303  
Albuquerque, New Mexico 87120