

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

**In re:**

**NEW MEXICO PARK RANGER'S LAW  
ENFORCEMENT ASSOCIATION,**

**Petitioner,**

**v.**

**PELRB CASE NO. 301-20**

**NEW MEXICO ENERGY, MINERALS and  
NATURAL RESOURCES DEPARTMENT,**

**Respondent.**

**ORDER**

**THIS MATTER** comes before the Public Employee Labor Relations Board for review of the Hearing Officer's Report and Recommended Decision issued August 25, 2020 ("Recommended Decision") after request for review by both parties. After consideration of the Recommended Decision, hearing oral argument by both parties and being otherwise sufficiently advised, the Board voted 3-0 to affirm and adopt the Hearing Officer's Report and Recommended Decision.

**THEREFORE**, the Board adopts Executive Director Griego's Recommended Decision that a unit comprising Park Ranger Supervisors, Park Ranger Specialists, Law Enforcement Certified Training Coordinators and Park Rangers, is an appropriate bargaining unit and the parties should proceed with the steps necessary to post notice and certify Petitioner as the exclusive representative of that unit according to Part Two of the Board's rules. Park Superintendents, Park Superintendents Senior, and Park Managers are excluded from collective bargaining as management employees pursuant to § 4(N) of the PEBA.

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

10/16/2020  
DATE

Marianne Bowers  
MARIANNE BOWERS, BOARD CHAIR

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

**STATEMENT OF THE CASE:** This matter comes before Thomas J. Griego, designated as the Hearing Officer in this case, as a representation proceeding to establish an initial bargaining unit of employees within the Energy, Minerals and Natural Resources Department's State Parks Division. The Petition seeks to establish a unit comprising employees whose job title, description, or duties require law enforcement certification. Petitioner contends that the petitioned-for bargaining unit should include Park Superintendents, Park Managers, Line Managers, Marine Enforcement Officers, Park Ranger Supervisors, Park Ranger Specialists, and Park Rangers based on a shared a community of interest and because none of the positions are statutorily exempt from collective bargaining. Respondent contends that only those positions whose State Personnel Office ("SPO") job classification is "Natural Sciences Coordinator" ("NSC") should be eligible for inclusion in the petitioned-for bargaining unit and that Park Superintendents, Park Managers, Line Managers, Marine Enforcement Officers, and Park Ranger Supervisors should be excluded from the unit as managers or supervisors. The parties do not dispute the inclusion of Park Rangers Specialists, law enforcement

certified Program Training Coordinators and Park Rangers in the petitioned-for bargaining unit. (Audio Part 1, 0:26:15 to 0:28:30).

Neither party bears the burden of proof in a representation proceeding. See 11.21.1.22 NMAC.

However, the burden of going forward with the evidence on the question of whether employees are excluded from collective bargaining as supervisors or managers is best allocated to the Petitioner, as this Board may not include in an appropriate bargaining unit supervisors, managers or confidential employees. See, *AFSCME, Council 18 v. Santa Fe County Board of County Commissioners*, 5-PELRB-15 (September 25, 2015, PELRB 305- 15).

All parties hereto were afforded a full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence, and to argue orally. Briefs were submitted by both parties and duly considered. 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

**FINDINGS OF FACT:**

1. On February 17, 2020, the New Mexico Park Ranger’s Law Enforcement Association (NMPRLEA) filed a Petition for Initial Certification of a New Bargaining Unit seeking to represent all Park Rangers employed by the State Parks Division (“Division”) of the New Mexico Energy, Minerals and Natural Resources Department (“EMNRD”). (Administrative Notice of Petition for Initial Certification filed in PELRB 301-20).
2. That Petition was found to be insufficient for reasons related to use of the term “Park Rangers” to describe members of the proposed unit and its effect on the submitted showing of support required by NMAC 11.21.2.11. Administrative Notice of Director’s Letter finding Initial Petition Inadequate filed in PELRB 301-20.

3. NMPRLEA filed an Amended Petition on February 19, 2020, changing the description of the petitioned-for bargaining unit to “All regular, non-probationary employees of the New Mexico State Parks Division of the Energy, Minerals and Natural Resources Department employed as certified or commissioned law enforcement officers, regardless of position title”. (Administrative Notice of First Amended Petition filed in PELRB 301-20).
4. No bargaining unit comprising the positions at issue in this case has been previously certified. (First Amended Petition ¶ 2; Respondent’s Statement of Issues).
5. It is not disputed that Respondent, is an agency of the State and as such is a public employer as defined in the Public Employee Bargaining Act NMSA 1978 § 10-7E-4(R) or that Petitioner, is a labor organization as defined in the Act § 10-7E-4(K).
6. The employees in the petitioned-for bargaining unit work in State Parks located at various locales statewide. (First Amended Petition ¶ 2; State Parks Division Organization Chart, Employer’s Exhibit 19).
7. The State Parks Division operates 35 parks, which are assigned to one of the following five regional offices based on their locations:  
  
Northwest Region.  
Northeast Region.  
Central Region.  
Southwest Region; and  
Southeast Region.  
  
(State Parks Division Organization Chart, Employer’s Exhibit 19.)
8. Each State Park is managed by either a Park Manager or a Park Superintendent.  
  
(Organization chart, Exhibit 19; Testimony of Toby Velasquez, Hearing Audio part 5 at 0:19:45 – 0:23:00).

9. The five regional offices are administered by Regional Managers. Each of the five Regional Managers reports to the Operations Bureau Chief who in turn reports to the Agency's Deputy Director and Director. (Organizational chart, Exhibit 19).
10. The positions at issue include the following:
  - a. Park Ranger (SPO classification is Natural Sciences Coordinator-0; Pay Range 55). 12 positions; 10 require law enforcement certification, seven positions are currently filled. (Testimony of Toby Velasquez, Hearing Audio part 5 at 00:30:42 - 31:04).
  - b. Park Ranger Specialist (SPO: Natural Sciences Coordinator-A; Pay Range 60). 35 positions; all require law enforcement certification; 24 are currently filled. (Testimony of Toby Velasquez, Hearing Audio part 5 at 33:09).
  - c. Park Ranger Supervisor (SPO: Natural Sciences Coordinator Supervisor; Pay Range 65). four positions; all require law enforcement certification; two are currently filled. (Testimony of Toby Velasquez, Hearing Audio part 5 at 29:30-41).
  - d. Park Manager (SPO: Line Manager II; Pay Range 70). 24 positions; 15 require law enforcement certification, 14 are currently filled. (Testimony of Toby Velasquez, Hearing Audio part 5 at 31:56-32:07).
  - e. Park Superintendent (SPO: Staff Manager; Pay Range 75). 17 positions: 14 require law enforcement certification, 13 currently filled. (Testimony of Toby Velasquez, Hearing Audio part 5 at 32:15-25).
  - f. Park Superintendent Senior (SPO: Admin/Ops Manager I; Pay Range 80). (Testimony of Toby Velasquez, Hearing Audio part 5 at 32:26-31).

11. At State Parks with boating activities, a Park Ranger may have the informal title of Marine Enforcement Officer. (Testimony of Toby Velasquez, Hearing Audio part 5 at 1:06:25 - 1:09:20; 1:15:45 -1:16:08).
12. All law enforcement certified Division employees are subject to the same chain of command as identified in the EMNRD organizational chart, Exhibit 19, which chain of command three positions; one requires law enforcement certification; one position is currently vacant. includes the Division's Chief of Law Enforcement. (Testimony of Mark Maloney, Hearing Audio Part 1, 01:12:26 – 01:13:18; Testimony of Toby Velasquez, Hearing Audio Part 5, 00:08:07 – 00:24:46; 00:24:46 – 00:30:30).
13. The chain of command for law enforcement certified personnel differs from that of non-certified personnel with the same working title in that a Chief of the Law Enforcement Bureau (a position the Petitioner does not seek to represent) is part of the chain of command for those with law enforcement duties. (Testimony of Toby Velasquez, Hearing Audio Part 5, 00:23:00 – 00:24:46).
14. All of the employees in the petitioned-for bargaining unit have similar hours of work. (Testimony of Toby Velasquez, Hearing Audio Part 5, 00:08:07 – 00:24:46.) For example, the Hyde Park management plan Exhibit 14 states:

“HMSP has five permanent employees including a Park Superintendent, a Park Manager, a Park Ranger and two Park Technicians. Presently, HMSP hours of operation are as follows: Winter hours 7:30 a.m. to 6:00 p.m.; summer weekdays 7:00 a.m. to 9:00 p.m.; summer weekends 7:00 a.m. to 12:00 a.m. The Park Superintendent and Park Manager, living on site, will respond to emergencies after working hours.”
15. All of the employees in the petitioned-for bargaining unit have similar employment benefits. (Special notice of the State Personnel Office's Total Compensation webpage at <http://www.spa.state.nm.us/total-compensation.aspx>.)

16. Some state parks offer on-site housing for park employees; provided, however, that this employment benefit is only offered to certified or commissioned law enforcement personnel. (Park Ranger PARF, Exhibit E; Park Superintendent PARF, Exhibit F; Policy Section 15, Section H, pp. 8-9, Exhibit I.)
17. Other job functions that are common and shared among employees in the petitioned-for bargaining unit include:
- a. Staffing the Visitor Center or Park Office.
  - b. Cleaning park bathrooms and toilets.
  - c. Mowing lawns and grassy areas.
  - d. Maintaining park landscaping.
  - e. Making minor repairs and maintaining fixtures and facilities.
  - f. Cleaning campsites.
  - g. Preparing park facilities, e.g. group shelters, lodges, yurts, campsites, etc. for occupation by park guests.
  - h. Taking and making reservations for park guests to rent park facilities.

(Testimony of Toby Velasquez, Hearing Audio Part 5, 00:40:21 – 00:41:48.)

18. Employees in the petitioned-for bargaining unit experience temporary work assignments at parks other than their primary assignments such that there is some measure of interchangeability among those in the group. (Park Ranger PARF, Exhibit E; Park Superintendent PARF, Exhibit F; Policy Section 15, Section H, pp. 8-9, Exhibit I.)
19. There is no functional distinction between a Park Manager and a Park Superintendent.  
(Testimony of Toby Velasquez, Hearing Audio part 5 at 0:19:45 – 0:23:00).
20. There is no position with the working title “Marine Enforcement Officer” and the only distinction among Park Rangers referred to as such is the emphasis on enforcing boating regulations. Regardless of their position’s working title either a Park Ranger may be designated as any particular park’s Marine Enforcement Officer but even though a Park Manager or Park Superintendent holding law enforcement certification may also enforce boating regulations just as a Marine Enforcement Officer would, they would not be

designated as “Marine Enforcement Officer”. (Testimony of Toby Velasquez, Hearing Audio part 5 at 1:07:00 – 1:09:48; Exhibit E).

21. State Parks Division full time positions that require law enforcement certification encompass the following working titles:

- a. Park Ranger (SPO classification Natural Sciences Coordinator-O; Pay Range 55).
- b. Park Ranger Specialist (SPO classification Natural Sciences Coordinator-A; Pay Range 60).
- c. Park Ranger Supervisor (SPO classification Natural Sciences Coordinator Supervisor; Pay Range 65).
- d. Park Manager (SPO classification Line Manager II; Pay Range 70).
- e. Park Superintendent (SPO classification Staff Manager; Pay Range 75).
- f. Park Superintendent Senior (SPO classification Admin/Ops Manager I; Pay Range 80).
- g. Program Training Coordinators (SPO classification Training and Development Specialists; Pay Range 65).
- h. Law Enforcement and Boating Safety Bureau Chief (SPO General Manager I; Pay Range 90).

22. A Park Ranger is evaluated under a SPO “Employee Evaluation” form (Exhibit 4) while Park Superintendents and Park Managers are evaluated under a SPO “Supervisor/Manager Evaluation” form (Exhibits 2 and 3 ). (Testimony of Toby Velasquez, Hearing Audio part 5 at 1:39:15 - 1:40:27).

23. Each Park Ranger must be evaluated for performance in the areas of customer service, productivity, quality, communication, job knowledge, adaptability and flexibility, and work environment and safety (Exhibit 4). Each Park Manager or Park Superintendent is evaluated for participative leadership, communication, problem solving and decision making, development of employees, and evaluation of employees (Exhibits 2, 3). (Testimony of Toby Velasquez, Hearing Audio part 5 at 1:40:30- 1:41:40; Exhibits 2 and 3).

24. Among the Deputy Director’s duties are managing, directing, and supervising the operations and administration of the parks, Regional Offices, headquarters and a

warehouse property. He develops, implements and measures strategic plan initiatives, provides direct management of the agency's operating budget and the agency's full-time and temporary employees. He works directly with EMNRD's Office of the Secretary, New Mexico Legislature, and various executive leaders from federal, state, and local agencies to accomplish the agency mission. (Administrative Notice of PELRB records herein, Exhibit 5 to EMNRD's Response to Petitioner's Motion to Determine the Petitioned-For Bargaining Unit is Appropriate, Declaration of Toby Velasquez.)

25. Park Supervisors and Park Managers are responsible for developing the park budget, making sure that it is monitored. They are responsible for developing park events and community outreach and these activities must be in harmony with department and division policies, mission, strategic plan, and Park Management Plan. (Testimony of Toby Velasquez, Hearing Audio part 5 at 42:10-43:38; 1:23:14-52; 1:21:55 -1:22:54; Part 6 at 0:6:14-08:22; 8:39-12:07.)

## **REASONING AND CONCLUSIONS OF LAW:**

### **I. PARK SUPERINTENDENTS AND PARK MANAGERS ARE MANAGERIAL EMPLOYEES EXEMPT FROM COVERAGE OF THE ACT. PARK RANGER SUPERVISORS ARE NOT MANAGERIAL NOR SUPERVISORY EMPLOYEES UNDER PEBA.**

My task in this proceeding is to determine whether the petitioned-for bargaining unit is "appropriate" as that term is understood under the Act. The Employer objects to the proposed composition of the unit because Park Superintendents, Park Managers, Line Managers, Marine Enforcement Officers and Park Ranger Supervisors should be excluded from the unit as managers<sup>1</sup>

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<sup>1</sup> § 10-7E-4(N) defines "management employee" as one "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".

or supervisors<sup>2</sup>. See NMSA 1978, §§ 10-7E-13(C) and 10-7E-4(N) and (I) (2020). See also NMAC 11.21.1.7(B)(18). Therefore, I begin my analysis with deciding whether those positions are supervisors or managers.

**A. ANALYSIS OF SUPERVISORY STATUS GENERALLY.** To determine whether an employee is a “supervisor” I undertake a three-pronged analysis as to each of the positions at issue: First, the employee must devote a majority of work time to supervisory duties; customarily and regularly direct the work of two or more other employees; and the putative supervisor 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, then the second prong of the analysis is undertaken to determine whether the purported supervisory duties are merely routine, incidental or clerical duties; or only occasionally performed; or their duties are substantially similar to those of his or her subordinates. If the second prong criteria are met, the employee is not a “supervisor” even if the first prong criteria are met.

Finally, in construing whether the employee devotes a majority of work time to supervisory duties and whether it has authority to hire, promote or discipline other employees or to recommend such actions effectively, the employee will not be deemed to be a supervisor if those duties are performed as a “lead employee” or consists of participating in peer review or occasional employee evaluation programs. See NMSA 1978, §§ 10-7E-4(I) (2020). See also *NEA & Jemez Valley Public Schools*, 1

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<sup>2</sup> § 10-7E-4(I) defines “supervisor” as one 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.

PELRB No. 10 (May 19, 1995) adopting the Hearing Officer’s Report and Recommended Decision identifying the three-part test embedded in the definition.

In applying the three-pronged analysis to the facts in any given case, the PELRB relies on actual job duties performed, rather than employer designations, definitions, expectations, job descriptions or standard operating procedure manuals. See *New Mexico State University Police Officers Association and New Mexico State University*, 1 PELRB No. 13 (June 14, 1995); *In re: McKinley County Sheriff’s Association Fraternal Order of Police & McKinley County*, 1 PELRB No. 15 (Dec. 22, 1995); *In re: Communications Workers of America, Local 7911 & Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996); *In re: Local 7911, Communications Workers of America & Doña Ana Deputy Sheriffs’ Association, Fraternal Order of Police and Doña Ana County*, 1 PELRB No. 19 (Aug. 1, 1996); *NEA v. Bernalillo Public Schools*, 1 PELRB No. 17 (May 31, 1996); *In re: New Mexico Coalition of Public Safety Officers, Local 7911, CWA, AFL-CIO & Town of Bernalillo*, 1 PELRB No. 21 (July 7, 1997). Accordingly, the SPO Classification Descriptions and Position Action Request Forms (PARFS) submitted by the Employer are given little weight unless no better evidence is available.

**B. Analysis of Managerial Status Generally.**

The term “manager” is defined by NMSA 1978, § 10-7E-4(N) (2020). To meet the definition an employee must be primarily engaging in executive and management functions and the employee must have 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.

After the 2020 amendments to the Act, Section 4(N) requires that in applying the above test 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. The first prong of the Act’s test requires that an individual possess and exercise a level of authority and independent judgment sufficient to significantly affect the employer’s purpose. The

second prong requires that an employee creates, oversees or coordinates the means and methods for achieving policy objectives and determines the extent to which policy objectives will be achieved.

“Employees exhibit such authority when they exercise independent judgment to establish policies and procedures, to prepare budgets, or to assure effective and efficient operations. Managerial employees must exercise discretion within, or even independently of established employer policy and must be aligned with management.” *NEA & Jemez Valley Public Schools*, 1 PELRB No. 10 (May 19, 1995).

The PELRB has held that the amount of time managers spend on duties similar to those of their employees is not determinative:

“Whereas to be a “supervisor” under § 10-7E-4(U) an employee must spend a ‘majority of work time’ performing supervisory duties, a ‘manager’ under § 10-7E-4(O) is one who is ‘engaged primarily in executive and management functions.’ Had the legislature intended the Board to analyze the time spent by putative managers to determine whether they spend more work time in managerial duties than in duties like their subordinates as we do when we analyze whether an employee is a supervisor, it would have used the same ‘majority of work time’ language used in § 10-7E-4(U). While the employee’s managerial duties may not be merely incidental, because, as § 10-7E-4(O) states, ‘[a]n employee shall not be deemed a management employee solely because the employee participates in cooperative decision-making programs on an occasional basis’. Rather, the analysis of whether one is primarily engaged in managerial duties involves consideration of the reason for creation of the unique position apart from subordinates regardless of their performance of similar duties. In other words, if the position in question exists so that the employer has someone at the worksite who is responsible for ensuring that management policies are properly developed and implemented, that person is a manager and is to be excluded from the bargaining unit.”

*AFSCME, Council 18 v. New Mexico Department of Health*, 2-PELRB-2017(PELRB 305-16); upheld on appeal, *AFSCME, New Mexico Council 18, AFL-CIO v. State of New Mexico, Dep’t of Health and New Mexico Public Employees Labor Relations Board*, D-202-CV-2017-08953, quoting *AFT v. Gadsden Schools*, 03-PELRB-2006.

Because some analysis of the duties actually performed is necessary to determine whether any given position’s reason for existing is primarily to perform executive and management functions, I do not

read the Board's prior cases cited above to mean that one should disregard the amount of time spent by a putative manager performing duties similar to those of their employees. Rather, the time spent in such disputes is not determinative. But just as the amount of time putative managers spend on duties similar to those of their employees is not determinative, neither is the employer's designation of that position as the one "responsible for ensuring that management policies are properly developed and implemented". In *AFT v. Gadsden Schools*, *supra*, this Board held that a significant number of distinct functions that differed from those of their subordinates were related to executive and management functions or developing, administering or effectuating management policies. The lesson of *AFSCME, Council 18 v. New Mexico Department of Health* and *AFT v. Gadsden Schools* is that emphasis is to be given the relative importance of (as contrasted the amount of time engaged in) management functions. Accordingly, when deciding management status in this case I will concentrate on the primacy of management functions in the context of total duties performed by the purported manager, taking into account the requirement of Section 4(N) of the Act providing that 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.

1. **Analysis of Park Ranger Supervisors' Supervisory Status.**

I rely primarily on the testimony of Toby Velasquez, Deputy Director of the Division to analyze Park Ranger Supervisors' Supervisory Status. With more than 21 years of experience and having risen through the ranks to his current position, I give his testimony regarding all the positions at issue great weight. At Hearing Audio part 5 at 0:29:20 to 0:30:30, Mr. Velasquez testified that there are only four personnel holding the Park Ranger Supervisor position because of the requirement that each must supervise at least two subordinates. Not all parks employ enough personnel to meet that requirement. (Testimony of Toby Velasquez, Hearing Audio part 5 at 0:35:37; 0:38:20 –

0:39:08). He described the Park Ranger Supervisors as “first line managers” and “first line supervisors”. (Testimony of Toby Velasquez, Hearing Audio part 5 at 0:35:37 - 0:35:44) and described their duties as conducting new-hire orientation and serving as field training officers. (Testimony of Toby Velasquez, Hearing Audio part 5 at 0:35:50 – 0:37:15).

Beyond that testimony there is very little evidence about what the Park Ranger Supervisors’ typical duties may be. We do have the benefit of Employer’s Exhibit 5, A SPO Position Action Request Form - Natural Science Coordinator Supervisor, which relates to the working title “Park Ranger Supervisor (Law Enforcement)”. From that document we learn that the position’s duties (at least at Navajo Lake State Park to which Exhibit 5 specifically relates) include “employee supervision and evaluation” along with non-specific “law enforcement, education, special events, safety, park maintenance and administration” duties. More specifically, the position appears to primarily serve a law enforcement and park maintenance function:

“This position, which is assigned to NLSP, is to assist the Park Manager with park operations. The incumbent will assist visitors, patrol the park and enforce state laws and agency rules, and maintain park facilities, grounds, vehicles and equipment. The incumbent will be responsible for supervising the work and job assignments of up to five assigned employees and park volunteers. This position will supervise and monitor the Marine Enforcement Boating program at NLSP. The position will monitor park operations, while performing general functions of the park administration, fee enhancement and related law enforcement. The position will develop and present interpretive/education programs for visitors and school groups. The position will coordinate and schedule programs with local schools and youth groups. The position will track and monitor programs presented to meet reporting requirements.”

With respect to the specific question of whether Park Ranger Supervisors are excluded from collective bargaining by application of NMSA 1978, §§ 10-7E-4(I) (2020) I note that according to the position’s essential functions listed and quantified on Exhibit 5, supervision accounts for 35% of the duties performed. Although, as stated above, such documents as Exhibit 5, being a statement of the employer’s designations, definitions, expectations, are not dispositive on the question of a

particular positions duties, in the absence of any other testimony as to Park Ranger Supervisors' duties, I am compelled to give the exhibit more weight than I otherwise might. Accordingly, I conclude that Park Ranger Supervisors do not devote a majority of work time to supervisory duties. While they customarily and regularly direct the work of two or more employees, the majority of their work time is spent in law enforcement and park maintenance duties. To the extent they assign tasks, ensure subordinates perform their job duties and complete their assignments, evaluate subordinates, ensure compliance with their training obligations and boating hours, conduct or assign staff safety meetings "as assigned", provide hands-on training for employees and volunteers and otherwise provide employee direction as needed, such work is in the nature of a lead worker's duties. I reach this conclusion based on their performing most, if not all, of the duties as their subordinates. See Exhibit 5. That they explain tasks to subordinates their supervisory functions are incidental and occasional and, for the most part, do not require the exercise of independent judgment and discretion because any such direction is circumscribed by the requirements of existing policies and operating procedures. (Testimony of Toby Velasquez, Hearing Audio part 5 at 0:49:26 – 0:52:06). Because I conclude that the position does not meet all three elements of the first prong of our three-prong test, I do not address whether Park Ranger Supervisors have authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively. See *In re: Communications Workers of America, Local 7911 & Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996); *In re: New Mexico Coalition of Public Safety Officers Ass'n and County of Santa Fe*, 78-PELRB-2012 (Dec. 5, 2012); *AFSCME v. N.M. Corrections Dep't.* 02-PELRB-2013 (Jan. 23, 2013). However, I note that the evidence as outlined supports a conclusion that the position's supervisory duties are merely routine, incidental or clerical duties, only occasionally performed and substantially similar to those of its subordinates. Consequently, the second prong criteria are met, so that the Park Ranger Supervisors would not be deemed to be supervisors even if the first prong criteria had not been met.

## 2. **Analysis of Park Ranger Supervisors' Managerial Status.**

In applying to two-part test outlined above I rely on Mr. Velasquez's testimony regarding management and executive functions generally, as well as the Position Action Request Form (PARF) for Park Ranger Supervisor, Exhibit 5, which contains a general description of duties comporting with Mr. Velasquez's testimony. In this case Toby Velasquez testified that his understanding of what constitute management and executive duties performed by the disputed positions is that management duties include ensuring that park programs and staff comply with their duties; monitoring and managing their respective park's budget and ensuring their respective park's fixed assets and other resources are used well to accomplish the Division's mission. Mr. Velasquez distinguished management duties from executive functions, which consist of liaison with outside agencies or government entities.

The referenced PARF outlines such duties as assisting the Park Manager with park operations, monitoring park operations, (including the Marine Enforcement Boating program at the Park for which Exhibit 5 was written) while performing general functions of the park administration, developing interpretive/education programs for visitors and school groups, coordinating and scheduling programs with local schools and youth groups and monitoring programs presented to meet reporting requirements. (Testimony of Toby Velasquez, Hearing Audio part 6 at 0:01:05 – 0:03:23).

According to Exhibit 5, the 10 most essential functions of this position (constituting 35% of the position's duties) include six that are supervisory, not managerial functions:

1. Make assignments to employees and volunteers.
2. Ensure assigned employees perform their job duties and complete their assignments.
3. Develop, initiate, review and rate Employee Evaluations for assigned employees.
4. Ensure assigned employees meet their training obligations and boating hours.

5. Provide employee direction as needed.
6. Assist the Park Superintendent with supervision of all employees and volunteers

Three of the remaining four functions constitute functions demonstrating a level of authority and independent judgment sufficient to significantly affect the employer's purpose or that require the Park Ranger Supervisors to create, oversee or coordinate the means and methods for achieving policy objectives and determine the extent to which policy objectives will be achieved:

1. Ensure Marine Enforcement program and Marine Enforcement Officers at NLSP are meeting department standards and duties.
2. Provide hands-on training for employees and volunteers.
3. Monitor and manage employee comp time accrual and balances within Department guidelines.

Although the fourth remaining function; planning, preparing and conducting or assigning staff safety meetings, might ordinarily be construed to be a managerial function, because the function is performed "as assigned by your supervisor" I conclude that it lacks the necessary level of authority and independent judgment sufficient to significantly affect the employer's purpose to qualify as a management function.

Accordingly, I conclude that 30% of the Park Ranger Supervisors' duties as outlined in the first section of Exhibit 5's list of essential functions constitute managerial duties. That percentage equates to 12.25% of the position's total functions.

In the second most essential functions section of Exhibit 5, I find that none of the listed function are managerial but are law enforcement duties substantially the same as those performed by their subordinates:

1. Patrol the park, including marine patrol, as assigned by your supervisor, to deter and detect crime, and to enforce Rules, Regulations, Boating Laws and New Mexico Statutes according to Department Policies and Procedures.
2. Ensure visitor compliance with state laws and Division rules through education and enforcement for resource protection, visitor enjoyment, and visitor and employee safety of natural resources.
3. Perform various law enforcement functions to include, but not limited to, conduct investigations, complete and submit incident reports, issue citations, complete and submit court-required documents, make court appearances, make arrests, and transport and book prisoners.
4. When required, may need to operate park vessels to assist visitors in need on the water.
5. Ensure daily collection, verification, and compliance of self-pay fees to ensure that the park collects all revenue possible. Sell annual permits and field collect fees as needed.
6. Request and attend training to enhance your professional development and maintain your law enforcement certification.

The third section constituting 20% of the essential functions lists the following:

1. Maintain and repair park grounds, facilities, vehicles, vessels and equipment.
2. Visually inspect all park grounds, facilities, vehicles, vessels and equipment periodically and notify your supervisor of any safety concerns or hazards in a timely manner.
3. Safely and proficiently operate park vehicles and equipment to include, but not limited to automobiles, off-highway vehicles, boats, heavy equipment and small equipment.
4. Provide training to employees and volunteers to promote a safe workplace and ensure they can perform their jobs.

5. Oversee the boating vessel and equipment maintenance as needed in support of the Boating program.

The last two, providing training and overseeing the boating vessel and equipment maintenance as needed in support of the Boating program constitute managerial functions. Those functions are 40% of the essential functions listed the third section of Exhibit 5 as constituting 20% of the Park Ranger Supervisors' duties, or 8% of the position's essential functions.

The last section on Exhibit 5 showing 20% of the position's essential functions includes:

1. Provide customer services
2. Collect, receipt and submit fees (monies).
3. Assist with the planning, development and execution of park projects and events.
4. Plan, develop and conduct park interpretive programs.
5. Oversee Boating education program at NLSF.
6. Review and ensure monthly Boating Reports are complete, accurate and submitted by the 6th day of each month.

Of these, the first two are not managerial in nature and are duties substantially the same as those performed by their subordinates. Assisting with planning, development and execution of park projects and events, planning and developing, if not also conducting park interpretive programs are management duties. I have been given no evidence to suggest that they are performed solely as part of a cooperative decision-making program or are routine, incidental or clerical. Therefore, 66% of the last sections functions are management; or 13.2% of the total.

By adding the percentage of management duties in each section I find that 33.45% of the listed essential duties can reasonably be construed as management. Because so few of the position's essential functions require the kind of independent judgment exercised in developing, administering, or effectuating management policies, I conclude that the Park Ranger Supervisors' jobs are not

primarily management or executive activities. I also note that the preponderance of the evidence supports a conclusion that Park Ranger Supervisors' responsibility for developing administering, or effectuating management policies, does not require them to do more than participate in cooperative decision-making programs on an occasional basis.

Having determined that the preponderance of the evidence supports a conclusion that Park Ranger Supervisors are not Managers or Supervisors exempt from coverage under the Act, I turn my attention to the next position at issue, Marine Enforcement Officers, and perform the same analysis as undertaken for Park Ranger Supervisors

### 3. **Analysis of Marine Enforcement Officers' Supervisory Status.**

There is very little evidence on the record regarding the duties performed by Marine Enforcement Officers. Park Ranger Specialist Mark Maloney testified a bit about the Marine Enforcement Officers as being within a particular chain of command but knew nothing about their day-to-day activities. (Testimony of Mark Maloney, Hearing Audio part 1 at 1:12:31 – 1:12:54). Park Manager Jordan Mitchell testified that a Marine Enforcement Officer is one of the three positions he supervises at Eagle Nest State Park (Testimony of Jordan Mitchell, Hearing Audio part 2 at 0:02:30 – 0:02:33), but that there is currently no fulltime Marine Enforcement Officer employed at the Park. (Testimony of Jordan Mitchell, Hearing Audio part 2 at 0:02:30 – 0:02:33). Of the three positions he supervises, two Park Technicians and a Marine Enforcement Officer, he inexplicably testified that his position is the only one required to be law enforcement certified. (Testimony of Jordan Mitchell, Hearing Audio part 2 at 0:03:07 – 0:03:26). In view of contrary evidence, I am taking his testimony to mean that his position is the only one currently law enforcement certified at Eagle Nest and Cimarron State Parks.

Deputy Director Toby Velasquez explained that Marine Enforcement Officers are stationed at State Parks with bodies of water, typically a lake, within their boundaries. Their duties are primarily to

enforce recreational boating safety education and boating regulation enforcement in connection with a U.S. Coast Guard program. The positions are funded by a federal matching grant for that purpose. The Marine Enforcement Officer positions have been used to support overall park operations but with an emphasis on recreational boating safety education and enforcement. (See testimony of Toby Velasquez cited below and Exhibit E, wherein the Park Ranger's duties include "Ensure compliance with...Boating Laws... and to provide... enforcement of Boating Statutes...". A Park Ranger may also be designated a Marine Enforcement Officer regardless of the position's working title. Although a Park Manager or Park Superintendent holding law enforcement certification may enforce boating regulations just as would a Marine Enforcement Officer, they would not hold a position with a working title "Marine Enforcement Officer". (Testimony of Toby Velasquez, Hearing Audio part 5 at 1:07:00 – 1:09:48).

Because none of the job descriptions, PARFs, or evaluation forms submitted into evidence refer to a working title "Marine Enforcement Officer", I conclude that there is no separate position bearing that working title. Instead, it appears to be an informal title given any law enforcement certified State Parks employee assigned recreational boating safety education and enforcement duties (except Park Managers or Park Supervisors). Accordingly, any analysis of the Marine Enforcement Officers' supervisory status is subsumed into my analysis of the supervisory status of Park Ranger Supervisors, Park Ranger Specialists, and Park Rangers.

#### 4. **Analysis of Marine Enforcement Officers' Managerial Status.**

For the same reasons outlined above, I conclude that there is nothing of a managerial nature in the recreational boating safety education and enforcement duties that are the hallmark of the Marine Enforcement Officer's duties. Because there is no separate position bearing that working title, any analysis of the Marine Enforcement Officers' supervisory status is subsumed into my analysis of the managerial status of Park Ranger Supervisors, Park Ranger Specialists, and Park Rangers.

5. **Analysis of Line Managers' Supervisory and Managerial Status.**

Just as “Marine Enforcement Officer” is not a working title apart from Park Ranger Specialists and Park Rangers, neither is “Line Manager” a working title. I can find no evidence relating to any “Line Manager” positions distinguished from other working titles that Petitioner seeks to include in the bargaining unit, nor does its closing brief make an argument concerning that title as a separate position apart from others it seeks to represent. Probably, that is because both Petitioner’s Exhibit G, and Respondent’s Exhibit 11, a New Mexico State Personnel Office (SPO) Position Action Request Form, indicates that “Line II” is the SPO Classification for the position with the working title of “Park Manager”. The Employer’s closing brief informs me that “Each Park Manager and Park Superintendent falls under one of several SPO manager classifications: Line Manager, Staff Manager, or Administrative/Operations Manager...” upon which basis it argues that Park Managers and Park Superintendents must be excluded from the bargaining unit. Accordingly, I find that there is no separate “Line Manager” position to be analyzed. The analysis of that classification is subsumed into the following analysis of Park Managers and Park Superintendents.

6. **Analysis of Park Managers'/Superintendents' Supervisory Status.**

Because every State Park is managed by either a Park Manager or a Park Superintendent and there is no functional distinction between a Park Manager and a Park Superintendent, I analyze the exempt status of both positions together as though they are one position. Beginning with the question whether the two positions are supervisors as defined in the Act, I note that the expectations of EMNRD for Park Superintendents is not uniform. For example, at Pecos Canyon State Park the Park Superintendent is:

“... responsible to lead, direct and manage the day-to-day operations of Pecos Canyon State Park. Ensure Department, Division and Park policy, goals and objectives are met through the supervision of staff responsible for various park programs which include: public land use and management, administration, budget, human resources, building and facility maintenance, equipment and tool

maintenance, interpretation/education programs, volunteers, marketing and public relations. Oversee and perform law enforcement to ensure all laws and rules are followed and to ensure visitor safety.”

New Mexico State Personnel Office Position Action Request Form for Park Superintendent, Pecos Canyon Park, Exhibit 9.

The Position Action Request Form for Park Superintendent, at Navajo Lake State Park, is somewhat different:

“The incumbent of this position is responsible for the protection and management of natural and cultural resources, visitor services, interpretation/education programs, facility management and maintenance, and overseeing public safety and law enforcement functions for the Navajo Lake State Park which is a very busy and heavily visited park. The incumbent will have a strong background regarding Department, Division and Park policy, and will ensure goals and objectives are met through the supervision of staff specialists responsible for the many park programs which include: public land use and management, administration, budget and finance, human resources, development and care of trails, boating safety, equipment and tool maintenance, volunteers, marketing and public relations, while following policy, procedures and regulations established by the applicable federal and state government agencies.”

New Mexico State Personnel Office Position Action Request Form for Park Superintendent, Navajo Lake State Park, Exhibit 8.

I compare those expectations with those for the Superintendent at Hyde State Park:

“The incumbent of this position is responsible for the protection and management of natural and cultural resources, visitor services, interpretation/education programs, facility management and maintenance, and overseeing public safety and law enforcement functions for the Hyde Memorial State. [sic] The incumbent will have a strong background regarding Department, Division and Park policy, and will ensure goals and objectives are met through the supervision of staff specialists responsible for the many park programs which include: public land use and management, administration, budget and finance, human resources, development and care of trails, equipment and tool maintenance, volunteers, marketing and public relations, while following policy, procedures and regulations established by the applicable federal and state government agencies.”

Job description for Hyde State Park Superintendent, Exhibit 13.

These variances among the employer’s expectations reflect the fact that specific duties performed by Park Managers and Superintendents vary from park to park depending on locale and principally

whether there is a body of water featured as part of the park. Toby Velasquez testified about these functional differences. For example, a Senior Park Superintendent at Elephant Butte State Park is primarily engaged in community outreach, (serving as an “ambassador” for state parks to the regional community) with no law enforcement duties, managing a larger staff requiring more time for administrative duties than would be required of some other Park Superintendents. Although the operational requirements for Park Managers and Park Superintendents may be substantially similar from park to park, the “magnitude” of those requirements varies depending on the park’s location. According to Deputy Director Toby Velasquez, taking as an example City of Rocks State Park, the volume of visitation, generation of revenue, programmatic work, other aspects of park management and law enforcement required there is “amplified” at a park such as Pecos Canyon State Park because of its greater size. Accordingly, while objective duties may be similar at any park’s location the relative importance or frequency of performing them can vary significantly. (Testimony of Toby Velasquez, Hearing Audio part 5 at 0:11:07 – 0:14:21).

These variances serve as a reminder that the Board has long relied on evidence of actual duties performed, rather than employer designations, definitions, expectations, job descriptions or standard operating procedure manuals such as are relied upon by the EMNRD in this case. See *New Mexico State University Police Officers Association and New Mexico State University*, 1 PELRB No. 13 (June 14, 1995) (discounting testimony that police sergeants are expected to supervise 100% of the time, where that expectation only results in the occasional performance or assumption of supervisory or directory roles); *In re: McKinley County Sheriff’s Association Fraternal Order of Police & McKinley County*, 1 PELRB No. 15 (Dec. 22, 1995) (considering actual duties performed rather than written job descriptions or Standard Operating Procedures manuals); *In re: Communications Workers of America, Local 7911 & Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996) (considering actual duties performed rather than written job descriptions and the employer’s expectation that a position would engage in

supervision while performing the work of subordinates); *In re: Local 7911, Communications Workers of America & Doña Ana Deputy Sheriffs' Association, Fraternal Order of Police and Doña Ana County*, 1 PELRB No. 19 (Aug. 1, 1996) (rejecting the significance of employer's designation of position as supervisor); *NEA v. Bernalillo Public Schools*, 1 PELRB No. 17 (May 31, 1996) (rejecting a local ordinance's conflicting definition of supervisor); *In re: New Mexico Coalition of Public Safety Officers, Local 7911, CWA, AFL-CIO & Town of Bernalillo*, 1 PELRB No. 21 (July 7, 1997) (it is not the rank nomenclature that is determinative but rather the facts related to whether the individual functions as a supervisor as defined under the Act); *AFSCME v. N.M. Dep't of Corrections*, 2 PELRB 2013 (July 13, 2012) (eight of nine Detention Center sergeant positions did not have supervisory duties and responsibilities actual day-to-day duties to meet the statutory definition for exclusion under PEBA. However, the Operations Sergeant was found to be a supervisor under PEBA).

The term "supervisor" for our purposes is a term of art and not every function that the layman may interpret as being supervisory will satisfy the statutory requirement for supervisory status excluding someone from collective bargaining under the PEBA. See *AFSCME v. NM Dept. of Corrections*, D-202-CV-2013-01920, (May 15, 2014) (District Court noted that PEBA's definition of "supervisor" is a term of art), cited in *In re: AFSCME, Council 18 v. Santa Fe County*, 5-PELRB-2015 (September 21, 2015) ("Although lieutenants may be 'supervising' in the ordinary sense of the word, 'supervisor' is a term of art with a specific statutory definition that includes more than simply giving direction to subordinate employees.").

In evaluating whether Park Managers/Superintendents meet the statutory definition of a "supervisor", I rely primarily on the testimony of the witnesses as to their actual job duties performed and secondarily on job descriptions, PARFS or standard operating procedures. Manual Villanueva, Park Manager at Storrie Lake State Park, testified that three fulltime employees, two of whom are law enforcement certified, work under him. His testimony regarding his primary

duty is conflicting. On the one hand he said his primary duty is to “make sure everybody is safe while having a good time ” requiring “constant patrolling”, (Testimony of Manual Villanueva, Hearing Audio part 1 at 0:32:40 – 0:43:40), while on the other, he testified that most of his time is spent “in the Office”. (Testimony of Manual Villanueva, Hearing Audio part 1 at 0:40:17).

I attempt to reconcile the conflict by correlating his testimony with the Purpose Statement section of the SPO Position Action Request Form (PARF) for the Park Manager position at Navajo Lake State Park, Exhibit 11, providing in relevant part:

“This position is a law enforcement position and will be responsible for ensuring the safety of the visitors by implementing, tracking and monitoring the safety and enforcement program in order to provide information and data in order to report and measure program success. This position is directly responsible for all law enforcement activities and programs at Navajo Lake State Park.”

Translating from “bureaucratese” into plain English, the preeminent duty of the Park Manager at Storrie Lake and Navajo Lake State Parks as stated in the PARF is to patrol the lakeshore for the purpose of detecting and correcting safety hazards and violations of boating policies, regulations or law, followed by filling out reports on those activities.

Park Managers and Superintendents also assist visitors and complete facility, grounds and equipment maintenance; collect and process revenues, perform administrative functions and other duties. Park Managers and Superintendents represent their respective parks while attending or conducting meetings, planning for park development and oversee construction projects and contractors.

(Testimony of Manual Villanueva, Hearing Audio part 1 at 0:32:40.) He testified that his daily duties consist of repairing park facilities (e.g. plumbing repair, painting), pumping the septic tanks at the park’s public restrooms, clean and maintain campsites non-descript paperwork. But most of his time is spent “in the Office”. (Testimony of Manual Villanueva, Hearing Audio part 1 at 0:40:17.)

The parties do not seem to dispute that Park Managers and Park Superintendents routinely supervise the work of two or more employees, but applying the remaining above-referenced criteria for

supervisory status, the preponderance of the evidence supports a conclusion that they do not devote a majority of their work time to supervisory duties, nor do they possess authority to hire, promote or discipline other employees or to recommend such actions effectively, other than as part of interview panels or as evaluators, which falls into the category of peer review or occasional employee performance review programs that expressly are not indicia of supervisory status.

Accordingly, because the Park Managers/Superintendents do not meet all of the threshold elements for supervisor status under the Act, they are not “supervisors” as defined in the PEBA are therefore, are not excluded from collective bargaining on that basis.

#### **7. Analysis of Park Managers’/Superintendents’ Managerial Status.**

The EMNRD organizational chart, Exhibit 19, shows that the State Parks Division operates 35 parks organized by geographic location under one of five regional offices administered by a Regional Manager. Each of the five Regional Managers reports to the Operations Bureau Chief who, in turn reports to the Agency’s Deputy Director and Director.

I take special notice of PELRB records herein, Exhibit 5 to EMNRD’s Response to Petitioner’s Motion to Determine the Petitioned-For Bargaining Unit is Appropriate for the fact that among the Deputy Director’s duties are managing, directing, and supervising the operations and administration of the parks, Regional Offices, headquarters and a warehouse property. He develops, implements and measures strategic plan initiatives, provides direct management of the agency’s operating budget and the agency’s full-time and temporary employees. He works directly with EMNRD’s Office of the Secretary, New Mexico Legislature, and various executive leaders from federal, state, and local agencies and entities to accomplish the agency mission.

In applying to two-part test for managerial status I note that on the one hand, Park Managers and Park Superintendents (including Park Superintendents Senior) spend a considerable amount of time performing the same duties as their subordinates, and that the Deputy Director is the foremost

responsible party for fiscal and operational management, thus making it difficult to conclude that they are “primarily engaging in executive and management functions”. On the other hand, the reason the positions of Park Manager and Park Superintendent exist is to implement the strategic plan initiatives, promulgated at the executive level and to measure results and manage the agency’s operating budget at the individual park level.

According to Exhibits 10 (PARF for Hyde State Park Superintendent) and 11(PARF for Park Manager) the most essential functions of those positions are executive and management functions requiring developing, administering or effectuating management policies beyond merely participating in cooperative decision-making programs on an occasional basis. For example, According to Exhibit 10, 25% of the Hyde State Park Superintendent’s essential functions include the following:

1. Oversee the recruitment, advertisement, interview and selection of all park staff.
2. Oversee the supervision and development of all Park staff.
3. Ensure employees meet their training needs and obligations, including Law Enforcement position requirements.
4. Develop, review and rate Employee Evaluations in accordance with SPO and EMNRD rules and policies and submit them to the Regional Manager for approval on a predetermined schedule.
5. Establish and post work schedules at least two weeks prior to start of the pay period. Put a copy of schedule on the shared regional schedule on the L drive.
6. Monitor and manage employee comp time accrual and balances within Department guidelines.
7. Ensure that timesheets are completed by all employees, using SHARE, on a pre-determined schedule.
8. Ensure daily work logs are completed and kept on file.

9. Conduct weekly staff meetings, ensure meeting minutes are taken and are accurate, post and maintain a file of minutes for a minimum of one year.
10. Provide employee direction as needed (e.g. recognizing deficiencies and taking appropriate action, recognizing positive performance, etc.).
11. Review Department and Division policies and procedures as assigned and return acknowledgment form by assigned deadline.
12. Ensure the Volunteer Program at the Park flourishes as evidenced by increased hours of service, expansion of volunteer opportunities and compliance with the SPD Volunteer Operations Manual. Ensure volunteers are recognized for positive performance, and deficiencies are dealt with immediately.

A few of the above functions arguably may be viewed as administrative or supervisory functions, e.g. “ensure daily work logs are completed and kept on file” or “put a copy of schedule on the shared regional schedule on the L drive” or “provide employee direction as needed” but those ambiguous functions are a *de minimus* exception.

An additional 35% of the essential functions also entail management functions:

1. Ensure the maintenance of all Park facilities, grounds and equipment is performed in accordance with SPD Standards of Care and other applicable rules, policies and guidelines. (This in the nature of a quality control inspector’s function, traditionally a management function inasmuch as it is enforcing the employer’s interests.)
2. Know the contents of and ensure SP D's compliance with the Friends of Hyde co-op agreement. Attend meetings.
3. Ensure all park programs are administered, managed, and conducted in accordance with SPD policies and procedures, guidelines, and applicable State and Federal laws.

4. Ensure that the following areas are professionally directed: fee collection, facility/grounds/equipment maintenance and use, water plant management, inventory control, law enforcement, volunteers, public relations, safety, visitor management, interpretation, trail management and natural/cultural resource management.
5. Ensure that all vehicles, heavy equipment and small equipment have the appropriate logbooks and that they are up to date.
6. Conduct monthly inspections of all park facilities and submit quarterly reports on SPD forms to your supervisor by the 15th of January, April, July and October.
7. Ensure concessions contract contents are thoroughly known. Ensure concessionaire's compliance with their respective contracts. Perform quarterly concession inspections and send a copy to the Region Office, the concessionaire and the Business Operations Specialist. Recommend new concession opportunities to the Concessions Administrator.
8. Enter weekly visitation, pass sales, interpretive programs and highlights in the "Parks Reporting" web-based application; Update park closures and alerts through the Parks Reporting app as necessary.
9. Submit to the Region Office all reports required by the Region Manager by the 15th day of January, April, July and October for the prior quarter.
10. Update inventory on quarterly basis and submit to the Regional Manager by 15th of Jan., Apr., July, and Oct.
11. Conduct two residence inspections annually in April/May/June(with the Reg. Mgr.) and in Sept./Oct.(sent to the Reg. Mgr.).
12. Use the Park Management Plan to direct projects and activities.
13. Assist Regional Manager as requested with detailed cross-inspection of another Region IV park as assigned (will be in the months of April/May/June).

14. Ensure that the Park Safety Officer keeps the Park's safety programs functioning in accordance with established Division/Department guidelines and is compliant with the bi-annual safety inspection process.
15. Conduct timely, accurate and effective communications between your Park and the Region Office.
16. Update the Operational Guidelines for your Park following Division standards, as needed or assigned.
17. Ensure monthly water usage and turbidity reports are sent to the NW region Water Ops Specialist. Ensure water samples are collected in accordance with the Hyde Sampling plan.

As with the preceding section of the PARF, a few of the above functions arguably may be viewed as administrative or supervisory functions, e.g. "ensure that all vehicles, heavy equipment and small equipment have the appropriate log books and that they are up-to-date" or "Enter weekly visitation, pass sales, interpretive programs and highlights in the "Parks Reporting" web- based application; Update park closures and alerts through the Parks Reporting app as necessary", or "submit to the Region Office all reports required by the Region Manager..." including an updated quarterly inventory. Again, I consider those ambiguous functions to be *de minimus* exceptions.

An additional 25% of the essential functions involve providing financial accountability for park operations, e.g. State Procurement Code compliance, managing the Park's petty cash fund, submitting reimbursements, tracking invoices, payment verification, monitoring the Park's budget to ensure expenditures relate to missions, strategic plan and Park Management Plan.

Here, I consider the legislature's directive in the 2020 amendment to the Act concerning fiscal responsibilities that are routine, incidental or clerical. In consideration of all the other management functions I do not consider these fiscal tasks to be routine, incidental or clerical, but as an integral part of the overall operational management of a park.

Finally, I note that the final 15% of the Park Superintendent's essential functions require working closely with EMNRD marketing staff to ensure the issuance of press releases for park events and interpretive programs, with park support and community groups including, but is not limited to, speaking engagements, attending meetings, serving on boards, committees, and participating in community events and programs. These relate to the testimony of Toby Velasquez wherein he describes that his understanding of what constitute management and executive duties includes monitoring and managing the respective Superintendent's budget and ensuring their respective park's fixed assets and other resources are used well to accomplish the Division's mission, acting as liaison with outside agencies or government entities and here, NGOs.

In addition, it is the Superintendent who is responsible for planning, coordinating and executing park events that promote the Park and Division missions and goals, and increase park revenues and visitation. An annual calendar of events for the year is submitted by the Superintendent.

I am particularly impressed by the depth of operational planning and management requiring independent judgment associated with the various Management Plans prepared and submitted by the superintendents, Exhibits 14-18.

With respect to the Park Manager positions, I conclude that because some parks are not managed by Superintendents but by Park Managers, so that all of the management functions outlined for Superintendents above are performed by Park Managers in those instances. Analysis of the PARF for Park Managers, Exhibit 11 reveals significant similarities between their essential functions and those performed by Superintendents, except their work is done in cooperation with or under the supervision of a Park Superintendent where there is one.

25% of the Park Managers' essential functions include completing Employee Evaluations, assisting the superintendent with the completion and implementation of work task schedules and daily

scheduling of all staff according to Agency Policies, Standards of Care and supervisor's directives. They perform follow-up to ensure subordinates tasks are completed according to standards. Park Managers also assist the superintendent with the recruiting, hiring and termination of seasonal Laborer positions, seasonal orientation and mandatory training assist with the tracking and approval of bi-weekly time sheets, manage assigned employee compensatory time accrual and balances. An additional 20% of the functions include conducting regular inspections for compliance of daily. They assist the Superintendent with purchasing by identifying and justifying need, obtaining appropriate bids, completing computerized quote sheet and initiating purchases according to Agency Policies and Procedures and State Purchasing Rules and Regulations and adequate budget. They direct the development of, and ensure compliance with, the NLSP Park Management Plans, Exhibits 14-18.

An additional 40% of the Park Managers' essential functions include daily law enforcement patrols, on-call duties, issuing citations, performing emergency shift work, rendering first aid, and assisting visitors in various capacities according to weekly schedules, supervisor's directives, agency policies and procedures and State Park Statutes and Regulations. That 40% includes collecting and verifying fees, according to Agency Policies and Procedures, and daily work schedules. I do not consider those duties to be management or executive functions. I do consider that portion of the 40% engaged in completing, reviewing and tracking Offense and Incident Reports, LEO monthly reports and inspections, processing issued citations and answering related correspondence to constitute management.

I also consider the 15% of the Park Managers essential functions overseeing management of the Recreational Boating Safety Program where applicable to constitute management duties.

By reason of the foregoing, I conclude that the Park Superintendents and Park Managers meet the definition of a management employee exempt from coverage of the Act in that they are primarily

engaged in executive and management functions. They have 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. To the extent either position performs fiscal management duties, those duties are not merely routine, incidental or clerical and most of the essential functions require a level of authority and independent judgment sufficient to significantly affect the employer's purpose. With the exception of their law enforcement related duties, the Park Managers and Superintendent duties require that they create, oversee or coordinate the means and methods for achieving EMNRD policy objectives.

Having reached conclusions on application of the statutory exemptions in NMSA 1978 Section 10-7E-13(C) to the positions in the petitioned-for bargaining unit, I turn to analysis of whether the proposed unit shares sufficient community of interest to constitute an appropriate bargaining unit as required by the Act.

**II. THE POSITIONS OF PARK SUPERINTENDENT AND PARK MANAGER DO NOT SHARE A SUFFICIENT COMMUNITY OF INTEREST WITH OTHERS IN THE PROPOSED UNIT TO CONSTITUTE AN APPROPRIATE BARGAINING UNIT. PARK RANGER SUPERVISORS, PARK RANGER SPECIALISTS, LAW ENFORCEMENT CERTIFIED TRAINING COORDINATORS AND PARK RANGERS SHARE A SUFFICIENT COMMUNITY OF INTEREST TO CONSTITUTE AN APPROPRIATE BARGAINING UNIT UNDER THE ACT.**

Concerning the Board designating an appropriate bargaining unit, NMSA 1978 Section 10-7E-13 (2020) provides in subsection A that:

“...Appropriate bargaining units shall be established on the basis of occupational groups or clear and identifiable communities of interest in employment terms and conditions and related personnel matters among the public employees involved...”

Neither party advances an argument that the propriety of the unit at issue here involves occupational group analysis. Rather, a shared community of interest analysis is called for in this case. In addition to the foregoing Section 13 of the Act also provides that the essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government,

the history of collective bargaining and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the Public Employee Bargaining Act. Accordingly, it is not merely appropriate but necessary to include those factors as part of this analysis along with what are colloquially referred to as the “*Kalamazoo* factors,” adopted by the NLRB in *Kalamazoo Box Corp.*, 136 NLRB 134, and traditionally applied by this Board. See *AFSCME v. Santa Fe County*, 2-PELRB-2016, (Hearing Officer’s Report, p. 19); *AFSCME Council 18 v. Dept. of Health*, 13-PELRB-2017, (Hearing Officer’s Report, p. 13). *Kalamazoo* factors to be considered include:

- (1) Method of wages or compensation.
- (2) Hours of work.
- (3) Employment benefits.
- (4) Separate supervision.
- (5) Job qualifications.
- (6) Job functions and amount of time spent away from employment situs.
- (7) Regularity of contact with other employees.
- (8) Level or lack of integration; and
- (9) The history of collective bargaining.

No single *Kalamazoo* factor is conclusive but the Board undertakes an examination and balancing of all applicable factors. See *NEA-Belen*, 1 PELRB No. 2 (May 4, 1992); *AFSCME Council 18 and Dep’t. of Health*, 13-PELRB-2017, (Nov. 16, 2017); *San Juan College v. San Juan College Labor Management Board*, 2011-NMCA-117. See also *Luginbuhl v. City of Gallup*, 2013- NMCA-053, 302 P.3d 751.

**A. Analysis of Proposed Bargaining Unit Members’ Method of Compensation and Employment Benefits.**

Upon review of Exhibits A-G and 5-12 I am able to find that the proposed unit consists of full-time permanent employees within seven SPO classifications with Pay Ranges from 55 to 80. I note from the exhibits that each position is funded 100% from the State’s General Fund and paid under the Classified system. None of the employees’ wage rates are based on a different pay scale such as the Governor’s Exempt pay plan. The Fair Labor Standards Act exempt status for each position is “non-exempt” except one the Park Superintendent shown as “Exempt – Executive”. That single

exception appears to be an outlier as other Park Superintendents are “non-exempt” and the Deputy Director testified there is no practical distinction between Superintendents and Park Managers, none of whom are FLSA exempt.

There is scant evidence of actual pay rates and benefits for the positions at issue. However, I take special notice of FY20 Classified Service Pay Plan at

[https://www.spo.state.nm.us/uploads/FileLinks/d6839f0160cd4c9a833e28d19898d24f/FY20\\_Classified\\_General.pdf](https://www.spo.state.nm.us/uploads/FileLinks/d6839f0160cd4c9a833e28d19898d24f/FY20_Classified_General.pdf) for the following rate information on the applicable pay bands:

- Pay Band 55 – midpoint of \$18.33 per hour (\$38,130 annually)
- Pay Band 65 – midpoint of \$22.21 per hour (\$46,197 annually)
- Pay Band 75 – midpoint of \$27.72 per hour (\$57,660 annually)
- Pay Band 80 – midpoint of \$31.29 per hour (\$65,089 annually).

I also take special notice of the State Personnel Office’s Total Compensation webpage at

<http://www.spa.state.nm.us/total-compensation.aspx> for examination of fringe benefits and average values associated with the above-referenced pay bands:

- FICA/Medicare (6.2% / 1.45% of gross salary) 4.4%
- PERA (16.99% of gross salary) 9.9%
- RHC (2% of gross salary) 1.16%
- Vacation (120 hours per year) 3.4%
- Sick (96 hours per year) 2.7%
- Holiday (80 hours per year) 2.2%
- Insurance (less than \$50,000) 17.9%
- Personal Day (8 hours per year) 0.2%

There is testimony that some state parks offer on-site housing to certified law enforcement personnel – a benefit that while not available to all members of the proposed bargaining unit, is available only to members of the proposed bargaining unit.

While there is a wide range of hourly rates paid to the putative unit members, it is not similarity in the wage itself that is critical. Rather, the more important inquiry is whether there is similarity in the employees’ wage *ranges or pay plans*, whether they are paid in a similar fashion (for example hourly) and whether they receive the same fringe benefits as part of their total compensation. In the instant

case, all positions in the putative unit share common rates and ranges of wages and fringe benefits. The Employer pays them hourly on a biweekly basis by check. Based on the PARFs, differences in the employees' rates of pay is based on experience, time served and previous work history. Therefore, this factor weighs in favor of finding that the proposed unit is appropriate.

**B. Analysis of Proposed Bargaining Unit Members' Hours of Work.**

All of the employees in the petitioned-for bargaining unit have similar hours of work. During off seasons (usually the winter months) all employees in the petitioned-for bargaining unit typically workday shift hours from approximately 8:00 a.m. to 4:30 p.m. During peak seasons, usually the summer months, all employees in the petitioned-for bargaining unit work extra or extended hours beyond the 8:00 a.m. to 4:30 p.m. off-season hours to provide law enforcement functions as needed in the evenings or during the weekends. Therefore, this factor weighs in favor of finding that the proposed unit is appropriate.

**C. Analysis of Proposed Bargaining Unit Members' Supervision.** All employees in the petitioned-for bargaining unit, are subject to the same chain of command structure including the Chief of the Law Enforcement and Boating Safety Bureau as set forth in EMNRD's organizational chart. By reason of the putative unit members' law enforcement duties their chain of command differs slightly from other non-law enforcement certified Division employees who may be in the same SPO job classification. See EMNRD Exhibit 19. This factor also weighs in favor of finding that the proposed unit is appropriate. See *AFSCME, Council 18 v. Luna County*, 9-PELRB-2016, Hearing Officer's Report, p. 16, wherein a finding that the lieutenants at issue were subject to the same chain of command as their subordinates in the bargaining unit militated in favor of their inclusion in the unit.

**D. Analysis of Proposed Bargaining Unit Members' Job Qualifications.**

It is extremely difficult and time consuming to determine the minimum and optimal job qualifications for all of the job positions at issue in this case because the qualifications are assigned to SPO Classifications on one Exhibit, which of the working titles fall within those Classifications on other exhibits and the confused statement of the working titles at issue in this case call for yet another cross-reference to see whether a position to be included in the bargaining unit has a corresponding SPO Classification at all. If there is an easier way to figure out the positions' minimum qualifications, neither party has let me know what it is.

As near as I can ascertain, the minimum qualifications for Park Managers and Park Superintendents according to Exhibit 12 are:

“A Bachelor’s Degree in any field of study from an accredited college or university and five (5) years of professional level experience operating within parameters and guidelines directly related to the purpose of the position defined by the agency at the time of recruitment. Any combination of education from an accredited college or university and/or direct experience in this occupation totaling nine (9) years may substitute for the required education and experience. A hiring agency will designate a portion of the required experience to include supervisory and/or specialized experience. Any required licensure, certification or registration shall be defined at the time of recruitment and will be in addition to the above requirements.”

Beyond the minimum requirements, a Park Manager or Park Superintendent must be a licensed Law Enforcement Officer or eligible for certification by waiver of previous training or must become certified within one year of hire. As a safety-sensitive position incumbents are subject to pre-employment, random, and reasonable suspicion drug testing.

The Park Ranger position correlate to the SPO Classification Natural Science Coordinator O. See Exhibit E. According to Exhibit A the minimum qualifications for that position is a High School diploma or Equivalency and two years of office administration experience. Recommended Education and Experience for Full Performance includes an Associate Degree in Parks and Recreation Management, Environmental Sciences, Forestry, Criminal Justice or Wildlife

Management and four years of experience in parks and recreation management, natural resources, biology, environmental sciences, forestry, criminal justice and/or wildlife management.

While Exhibit A does not set forth the position's law enforcement certification requirements it is logical to conclude that the certified law enforcement Park Rangers to be included in this unit share the same State law enforcement certification requirements as outlined above for Park Managers and Superintendents.

Park Ranger Specialists correlate to SPO Classification Natural Science Coordinator A. See Exhibit D. The minimum qualification for those positions are an Associate Degree in Parks and Recreation Management, Environmental Sciences, Forestry, Criminal Justice or Wildlife Management and two years of experience in parks and recreation management, natural resources, biology, environmental sciences, forestry, criminal justice and/or wildlife management Any combination of education from an accredited college or university in a related field and/or direct experience in this occupation totaling four (4) years may substitute for the required education and experience. The Recommended Education and Experience for Full Performance are a bachelor's degree in Parks and Recreation Management, Environmental Sciences, Forestry, Criminal Justice or Wildlife Management and two years of experience in parks and recreation management, natural resources, biology, environmental sciences, forestry, criminal justice and/or wildlife management.

Setting aside the law enforcement credentialing common among all putative bargaining unit members, there is little commonality in the minimum requirements among Park Rangers Specialists, law enforcement certified Program Training Coordinators and Park Rangers agreed to be in the petitioned-for bargaining unit, the Park Ranger Supervisors I have concluded are not statutorily exempt and Park Superintendents or Park Managers. The former group of employees share substantially similar minimum qualifications. The latter require much greater formal education and years of experience. This factor militates against commonality of interest for Park Superintendents

and Park Managers but in favor of Park Rangers, Park Ranger Specialists, law enforcement certified Program Training Coordinators and Park Ranger Supervisors.

**E. Analysis of Job Functions and Amount of Time Away From Employment Situs.**

I conclude that there are significant differences among Park Managers and Superintendents and the other positions at issue considering this factor. The former have responsibility for coordinating their respective park's management. While performing hands-on law enforcement and facilities maintenance those positions coordinate the same activities performed by subordinates. They also have budget administration and personnel management functions that are distinct from Park Rangers, Park Ranger Specialists, Program Training Coordinators and Park Ranger Supervisors. (Recruit and Hire Request Form – Hyde Park Superintendent, Exhibit 13). Among the responsibilities that are not shared with the other positions are managing visitor services, interpretation/education programs and ensuring that the Division's goals and objectives are met for the "many park programs". (Job Posting – Park Superintendent Exhibit 12). To illustrate this difference, I refer again to my discussion of the statutory supervisory exemption wherein I noted that the Pecos Canyon State Park Superintendent is:

“... responsible to lead, direct and manage the day-to-day operations of Pecos Canyon State Park. Ensure Department, Division and Park policy, goals and objectives are met through the supervision of staff responsible for various park programs which include: public land use and management, administration, budget, human resources, building and facility maintenance, equipment and tool maintenance, interpretation/education programs, volunteers, marketing and public relations. Oversee and perform law enforcement to ensure all laws and rules are followed and to ensure visitor safety.”

New Mexico State Personnel Office Position Action Request Form for Park Superintendent, Pecos Canyon Park, Exhibit 9.

Other exhibits referenced in my supervisory analysis support the distinction drawn. For example, the Position Action Request Form for the Park Superintendent, at Navajo Lake State Park calls for management of natural and cultural resources, visitor services, overseeing public safety and law

enforcement functions, will ensure goals and objectives are met for the many park programs following policy, procedures and regulations established by the applicable federal and state government agencies. (Exhibit 8, *supra*.) See also, Job description for Hyde State Park Superintendent, Exhibit 13.

While there is definitely overlap in the functions performed by all jobs the Petitioner seeks to represent, particularly with regard to their law enforcement duties, there is just a definitely an additional level of management responsibilities of Park Managers and Superintendents not shared with the other positions. That this is so is illustrated by the testimony of Manual Villanueva, *supra* who testified that while Park Managers and Superintendents assist visitors and complete facility, grounds and equipment maintenance, just as Park Rangers and other subordinates do, they also perform administrative functions, represent their respective parks to outside entities requiring them to attend or conduct meetings. They plan park development and oversee construction projects and contractors. Consequently, while Mr. Villanueva's duties included plumbing repair, painting park facilities, pumping the septic tanks at the park's public restrooms, cleaning and maintaining campsites alongside his subordinates, he testified that most of his time is spent "in the Office".

Toby Velasquez described the Park Manager/Superintendent's representation of their assigned park to outside entities as serving as an "ambassador" to those entities. That function implicitly requires time away from the park, which is a sharp contrast with others in the putative bargaining unit. Those distinctions are reflected in the performance evaluations for the various positions. As the Division argues in its closing brief, Park Rangers are evaluated in the areas of customer service, productivity, quality, communication, job knowledge, adaptability and flexibility, and work environment and safety. (Park Ranger Employee Evaluation Exhibit 4). In contrast, Park Managers and Park Superintendents are evaluated for participative leadership, communication, problem solving and decision making , development of employees, and evaluation of employees. (Bates Manager

Evaluation, Exhibit 2; Ford Manager Evaluation, Exhibit 3). With regard to the one area that overlaps, “communication”, the emphasis placed on specific aspects of communication differs considerably. Whereas a Park Manager or Superintendent is evaluated on his or her ability to give clear and complete instructions and well-organized presentations to meet the communications expectations, a Park Ranger is evaluated on his or her ability to actively listen, to respond appropriately and ability to be courteous and diplomatic with supervisors and managers. (Bates Manager Evaluation, Exhibit 2; Ford Manager Evaluation, Exhibit 3, Park Ranger Employee Evaluation Exhibit 4).

These distinctions weigh against commonality of interest. Park Managers and Superintendents are not, as argued by the Petitioner, comparable to local store managers in charge of the day-to-day operations of their stores while division managers operating out of a central office performed all management and executive functions. See, Petitioner’s closing brief citing *Metropolitan Life Insurance Co.*, 156 NLRB 1408, 1414; *Sav-On Drugs, Inc.*, 138 NLRB 1032, 1034. Rather, in this case, Park Superintendents and Park Managers perform numerous executive and management duties that cannot be performed by their subordinates with responsibility for financial management, implementation of State Park and agency plans, policies and regulations, and interaction with external entities, volunteer organizations, community groups, local governments, and concessionaires requiring time away from their respective park and entailing job function with little in common with their subordinates.

**F. Regularity of Contact With Other Employees.** With the exception of those instances noted above where the Park Superintendents and Park Managers duties require them to work off site, all positions in the putative bargaining unit have frequent contact with each other. This factor weighs in favor of finding commonality of interest among all employees in the group, but because of the exceptions noted, less so for Park Managers and Supervisors.

**G. Level of Integration.** Based on the evidence cited above the preponderance of the evidence supports a conclusion that Park Ranger Specialists enjoy considerable interchangeability with Program Training Coordinators and Park Rangers acknowledged to be an appropriate bargaining unit. The Park Ranger Supervisors are less well integrated and the Park Superintendents and Park Managers, not at all. The interchangeability at their level operates in only one direction – Park Managers and Superintendents may, and often do, perform the same functions as their subordinates their subordinates cannot perform the distinctive functions of those positions as outlined above. This factor weighs in favor of finding a commonality of interest for all but the Park Managers and Park Superintendents.

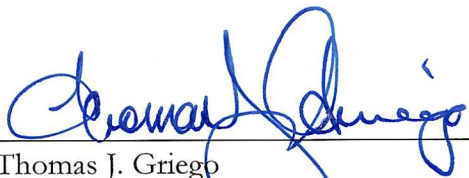
**H. History of Collective Bargaining.** As there is no history of collective bargaining involving the employees at issue this factor does not weigh either in favor of, or against finding commonality of interest.

**DECISION:** The Division makes the point in its brief that the necessary implication of finding the proposed unit shares commonality of interest on the grounds requested by Petitioner is that a Park Ranger with law enforcement certification would be found to have more in common with a Park Manager or Park Superintendent whose primary duties are to oversee the management of the State Park on behalf of upper management than they would with another Park Ranger without law enforcement certification. I conclude that the commonality of law enforcement training, certification and associated duties and differing chain of command cannot be the controlling common interest if the *Kalamazoo* factors are to be properly applied. Petitioner chooses not to represent those who arguably otherwise might share a commonality of interest but do not have the critical law enforcement element that Petitioner seeks to represent. I have some reservations about excluding employees from the unit who otherwise share commonality of interest solely on the basis of law enforcement certification and duties. However, because a “most appropriate bargaining unit” is not

required, only that the unit sought to be represented is an appropriate one, (See, e.g. *San Juan College v. San Juan College Labor Relations Board, supra*. I conclude that the addition training, equipment and law enforcement duties and different chain of command required of the certified positions justifies carving out certain employees for representation while leaving other employees with the same working title but who are not required to be law enforcement certified out of the petitioned-for unit. In this case, Park Superintendents, Park Superintendents Senior Park Managers, and Park Ranger Supervisors perform numerous duties that cannot be performed by their subordinates. These include supervision and direction of staff, oversight of park operations, responsibility for financial management, implementation of State Park and agency plans, policies and regulations, and interaction with external entities including SPD management, volunteer organizations, community groups, local governments, and concessionaires. All other positions not expressly included herein are excluded.

By reason of the foregoing I conclude that a unit comprising Park Ranger Supervisors, Park Ranger Specialists, Law Enforcement Certified Training Coordinators And Park Rangers, is an appropriate bargaining unit under the Act and the parties should proceed with the steps necessary to post notice and certify Petitioner as the exclusive representative of that unit according to Part Two of the Board's Rules. This decision may be reviewed by the Board if requested in accord with NMAC 11.21.2.22.

Issued, Tuesday, August 25, 2020.



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