Docusign Envelope ID: 16B775EC-2B6F-8228-82A9-59147AF4F1F8

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 18, AFL-CIO,

Petitioner, **PELRB No. 308-26**

v.

OTERO COUNTY,

Respondent.

ORDER

THIS MATTER comes before the Public Employee Labor Relations Board at its regularly scheduled meeting on October 20, 2026, upon the Petition filed April 1, 2026, to Certify the Petitioner as the exclusive representative of a bargaining unit consisting of all non-probationary Officers, Sergeants, Corporals, Transport Officers, and Training Officers. The Board, having reviewed the file, and being otherwise sufficiently informed, finds and concludes: The Petition does not raise a question concerning representation and it presents sufficient facts including sufficient support among the employees in the petitioned-for positions to be represented by Petitioner pursuant to NMAC 11.21.2.33.

Upon review of the submissions and no one appearing in opposition to the Certification, the Board by a vote of 3-0 hereby affirms and ratifies the Hearing Examiner's Report on Unit Composition dated September 25, 2026; the Card Check Results; and the Certification of Representation issued by the Executive Director on October 15, 2026, including the findings therein.

DocuSigned by:
Peggy Nelson
9E707CC2FDCE437...

Date: 10/28/2026

Peggy J. Nelson, Board Chair

State of New Mexico
Public Employee Labor Relations Board

2929 Coors N.W. Suite 303 • Albuquerque, NM 87120
(505) 831-5422 Telephone • (505) 831-8820 Facsimile

Certification of Representation (Amended)

The undersigned hereby certifies that **American Federation of State, County and Municipal Employees, Council 18** (Union) has demonstrated a sufficient basis such that it should be recognized as the exclusive bargaining representative for those employees in the following bargaining unit comprised of employees of the **Otero County Detention Center**:

> **All non-probationary Officers and Corporals, excluding all supervisors, managers, and confidential employees.**

The undersigned makes this certification based on the following:

1. By a Petition filed **April 1, 2026,** (308-25) the Union informed Otero County that it was prepared to demonstrate sufficient support among certain employees for its recognition as the exclusive collective bargaining representative for those employees.
2. On **April 2, 2026,** PELRB Staff determined that the Petition was facially valid and that a preliminary review demonstrated a sufficient showing of interest to proceed toward a card count.
3. On **September 25, 2026,** the Hearing Examiner issued a Report and Recommended Decision resolving all issues of unit inclusion or exclusion, which excluded the Sergeants because the position is vacant, and the Training Officer because a community of interest was not demonstrated.
4. On **October 2, 2026,** the Employer provided a copy of a unit employee list. That list shows that there were **18** employees, and confirmed the preliminary finding of sufficiency.
5. On **October 13, 2026**, PELRB Staff compared the interest cards to the employee list and found the Petition was supported by a majority of the employees in the unit. Accordingly, the undersigned hereby certifies that the Union is certified as the exclusive bargaining representative for the unit described above.
6. On October 15, 2026 the October 13 certification was amended to correct erroneous inclusion of Sergeants and Training Officers.

ISSUED in Albuquerque, New Mexico on October 15, 2026 by:

Pilar Vaile
Executive Director

PUBLIC EMPLOYEE LABOR RELATIONS BOARD
PELRB

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 18, AFL-CIO,

Petitioner, **PELRB No. 308-26**

v.

OTERO COUNTY,

Respondent.

RESULTS OF CARD CHECK

On October 13, 2026, pursuant to NMAC 11.21.2.33, after resolving all unit composition issues and there being no intervention or request for Board review filed, the union's showing of interest was compared with the employee list provided by the employer. The following is the result of that comparison:

1.	Total Number of Employees in Bargaining Unit	18
2.	50% of Employees in Bargaining Unit Equals:	10
3.	Total Interest Cards Indicating Support	17
4.	Number of Challenged Cards	5
	Challenged Cards Rejected By Director	5
	Challenged Cards Accepted By Director	0
5.	Total Number of Valid Cards	12
6.	Percent of Employees in Bargaining Unit indicating support	67%

WHEREFORE, the showing of interest demonstrates majority support for AFSCME Council 18, and the certification of its recognition as the exclusive representative of the unit in question shall therefore issue.

Date: October 13, 2026

Pilar Vaile
Exec. Dir. and H.E.

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 18, AFL-CIO,

Petitioner, **PELRB No. 308-26**

v.

OTERO COUNTY,

Respondent.

HEARING EXAMINER'S REPORT ON UNIT COMPOSITION

This matter comes before the undersigned Hearing Examiner pursuant to a Petition for Representation filed by AFSCME (Union or Petitioner) on April 1, 2026; and the Answer filed by the Otero County on behalf of the County Detention Center (Respondent, County, or Detention Center), on April 30, 2026, upon an extension of time to do so.[1]

The Petition seeks to represent "[a]ll non-probationary Officers, Sergeants, Corporals,…and Training Officers"[2], and it expressly disavowed interest in representing "Supervisors, Managerial Employees or Confidential Employees, including the Correctional Services Director, Lieutenant and Administrative Assistant, and Maintenance employees." (Pet. At ¶¶ 1-2.) The County objected, arguing that the Corporals, Sergeants, and Training Officer are excluded as confidential employees, or supervisors and/or managers. (Answer at ¶¶ 1-3.)

A Status and Scheduling Conference was held on May 21, 2026; and a Scheduling Order was issued on May 212 2026. On June 25, 2026, the Respondent filed a motion to dismiss on grounds that the petitioned-for bargaining unit had been previously represented by another now

[1] The PPC was amended on May 1, 2026 to change the Respondent from the Otero County Detention Center to the Count, which the undersigned deemed did not require an Amended Answer.

[2] The PPC also named Transport Officers but all Transport Officer positions besides the Transport Corporal are vacant (Co. Ex. 1, Organizational Chart), and the Union did not proffer or reference any evidence about this position at the hearing or in its written closing arguments, so that claim is deemed waived.

non-existent union nearly twenty years ago, which was summarily denied the following day. *See* Vaile Email Minute Order dated June 26, 26 10:17:00 AM.[3]

Thereafter; a unit composition hearing was held on June 29, 2026, via Zoom and pursuant to the Scheduling Order. There, the witnesses testified under oath administered by the Hearing Examiner[4]; and the proceedings were audio-recorded.[5] All Parties hereto were afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce and/or object to evidence. Both Parties timely filed post hearing briefs on August 18, 2026, and the Respondent supplemented the record with Co. Exs. 20 and 21 (video) on or about August 25, 2026; after which this Report was timely issued upon an extension of time under PELRB Rules.

Based upon the following findings, relevant law, and analysis, the undersigned Hearing Examiner finds and concludes that Sergeants, Corporals, and Training Officers" are neither supervisory nor managerial, they share a clear identifiable community of interest with the other petitioned for Detention Center Officers; and the petitioned-for unit is appropriate under § 13 of the Public Employee Bargaining Act, NMSA 10-7E-1 et seq. Accordingly, the undersigned

[3] The undersigned found that "the last cited contact or contract as exclusive representative was nearly 20 years ago (2007)" and that "evidence will still need to be presented on Monday as to the continued existence of this Otero County Detention Officer's Association (OCDOA), and for practical purposes the initial burden of production will still be on the Employer since it's the Employer's argument and it has not made a *prima facie* case based on the Motion and Exhibits." Moreover, "PELRB emails (previously shared and of which I take administrative notice) reflect that the County did not identify this union when I specifically inquired with HR representatives about existing bargaining units, representatives and/or CBAs. That reflects that the OCDOA was not an existing exclusive representative for any County employees as of the spring of 2025, even if it …[was] on June 30, 1999 and until March 6, 2007." However, "Section 24 states in it[s] title that it applies to 'existing collective bargaining units'; and [Section] 25 states only that "[n]or shall anything in the [PEBA] be construed to annul or modify the status of an existing or recognized exclusive representative." Thus, the Board's Order in the Clovis case, 10-PELRB-2026, did not control "to the extent it suggested a presently nonexistent incumbent is frozen in time as representative, and that employees can therefore never be represented by another union again or enter into a new CBA because the presently nonexistent exclusive representative of yore is (obviously) unable to demonstrate majority support." *Id.* (emphasis added). Respondent preserved its objection to this ruling at the start of the unit composition hearing but did not seek thereafter to introduce evidence that the 2007 incumbent union or bargaining unit were still in existence today.

[4] Respondent requested that the witnesses be sequestered, which motion was denied because unit composition hearings are non-adversarial matters and it contrary to the weight of PELRB practice to sequester witnesses for these types of hearings. *See* Respondent Post-Hearing Brief at 2 and note 3, and cites therein.

[5] The H.E. failed to record the testimony of Mr. Wiley but her notes capturing the gist were read into the record and the witness and counsel were allowed to add to that summary as needed.

recommends that the Petition be granted subject to a demonstration of majority support as instructed at the conclusion of this Report.

APPEARANCES AND RECORD

<u>For the Union</u>	
Stephen Curtis, Esq.	Youtz & Valdez, P.C.
Ricardo Terrazas	Detention Center Corporal and Witness
Gary Wiley	Former Detention Center Corporal and Sergeant, & Witness
Rob Trombley	AFSCME Council 18 Asst. Dir., former Public Safety Coordinator, & Witness
<u>For the Respondent</u>:	
Dina Holcomb, Esq.	Holcomb Law Office
Uziel Inzurriago	Former Detention Center Corporal and Sergeant, Witness
Orlando Sanchez	Detention Center Captain, former Corporal and Sergeant, and Witness
Nena Sisler	Corrections Services Director, former Training Officer and Sergeant, and Witness

In addition to the sworn testimony of the foregoing six (6) witnesses, the Union entered at least three (3) exhibits[6] and the Employer admitted 21,[7] upon stipulation or without objection.

RELEVANT LEGAL STANDARDS

No Party bears the burden of proof in the case of an initial Petition for Representation[8], and it is instead the undersigned Hearing Examiner's duty to fully develop a record sufficient to decide the matter. *See* 11.21.1.22(A) NMAC; *see also San Juan College v. San Juan College Labor*

[6] Un. Ex. C, Job Descriptions (no objection); Un. Ex. D, Detention Center Policies 106, 200, 201, 202, 205, 301, 302, 314, and 503.5 (stipulated); and Un. Ex. E, Detention Center Post Orders (no objection).

[7] All by stipulation: Co. Ex. 1, Organizational chart; Co. Ex. 2, Detention Corporal job description; Co. Ex. 3, Detention Sergeant job description; Co. Ex. 4, Detention Training Officer job description; Co. Ex. 5, Disciplinary actions; Co. Ex. 6, Evaluations; Co. Ex. 7, Performance Improvement Plan l; Co. Ex. 8, Performance Improvement Plan 2; Co. Ex. 9, Performance Improvement Plan 3; Co. Ex. 10, Schedule; Co. Ex. 11, Overtime request; Co. Ex. 12, Oversight form; Co. Ex. 13, Log review; Co. Ex. 14, Meal count; Co. Ex. 15, Head count; Co. Ex. 16, Booking release authorization; Co. Ex. 17, Supervisor meeting December 2025; Co. Ex. 18, Supervisor meeting January 2026; Co. Ex. 19, Supervisor meeting March 2026; Co. Exs. 20-21, Videos and summaries of Terrazas on June 1-2, 2026.

[8] *Disting. AFSCME Council 18 and Santa Fe County*, 5-PELRB-2015 (Sep. 21, 2015, in re: Case No. 305-15) (that for *accretion* petitions, the burden is on the union as petitioner to establish the elements stated in NMAC 11.21.3.38); and *see infra*, Analysis, I (Burden of Proof).

Mgmt. Relations Board, 2011-NMCA-117 (that the labor Board is charged with the statutory duty of designating appropriate bargaining units for collective bargaining; there is no absolute rule of law as to what constitutes an appropriate bargaining unit; and courts will defer to the Board's decision on what constitutes an appropriate bargaining unit if that determination is supported by substantial evidence and otherwise in accordance with the law).

In rendering her findings, conclusions, and recommendations, the undersigned applies the following language from PEBA, as well as relevant PELRB precedent:

> **10-7E-13. Appropriate bargaining units.**
>
> A. The board or local board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining units for collective bargaining..
> B. …
> C. The board or local board shall not include in an appropriate bargaining unit supervisors, managers or confidential employees.
>
> …
>
> **10-7E-4. Definitions.**
>
> As used in the Public Employee Bargaining Act: …
>
> G. "confidential employee" means a person who devotes a majority of the person's time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies; …
>
> N. "management employee" means 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;… [and]
>
> T. "supervisor" means an employee who devotes a majority of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees and 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.

Id.

The factors for determining whether a group of employees share a "community of interest" under § 13 regrading an appropriate bargaining unit include: (1) differences in method of wages or compensation; (2) differences in work hours; (3) differences in employment benefits; (4)

separate supervision; (5) degree of dissimilar qualifications, training and skills; (6) differences in job functions and amount of working time spent away from the employment or plant *situs*; (7) the infrequency or lack of contact with other employees; (8) the lack of integration with the work functions of other employees, or interchange with them; and (9) the history of collective bargaining. *See also NEA-Belen & Belen Fed. of School Employees & Belen Consol. Schools*, 1 PELRB No. 2 (May 13, 1994) (applying the statutory exclusions/definitions and citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962), for the factors for determining community of interest); and *McKinley County Sheriff's Ass'n, FOP and McKinley County*, 1 PELRB No. 15. (applying the statutory exclusions).

As the Respondent points out, the purpose of excluding confidential, supervisory and managerial employees is to avoid a conflict of interest within the bargaining unit, which would obviously destroy or impede the required community of interest. *See, e.g.*, *Firefighters and City of Santa Fe*, 1 PELRB No. 6 (Jan. 19, 1995) (determining that the paramilitary structure of the fire department did not create a conflict of interest in having fire captains represented in a bargaining unit with subordinates or destroy the community of interest among these employees).

The test for "confidential employee" under § 4(G) looks at both the duties of the employee at issue and their boss; and where the bargaining relationship is new, it will be based on reasonable expectations. Criteria considered in the past are whether the employee:

- is or could likely be on the employer's bargaining team;
- is privy to the employer's District's labor-management policy or bargaining strategy;
- has access to confidential financial or other data used in bargaining; or
- has input or involvement in the employer's contract proposal formulation.

See AFT Local 4212 and Gadsden Indep. Sch. Dist., 03-PELRB-2006; *NEA and Jemez Valley Public Schools*, 1 PELRB No. 10 (May 19, 1995).

The test for "manager" under § 4(N) has two main parts:

1. the employee is primarily engaging in executive and management functions, and
2. he or she has responsibility for developing administering, or effectuating management policies, which requires the employee to do more than merely participate in cooperative decision-making programs on an occasional basis.

See § 4(N) (Amended 2020).

The first prong of the Act's test for management employees requires that the individual possess and exercise a level of authority and independent judgment sufficient to significantly affect

the employer's purpose. The second prong requires that the employee create, oversee, or coordinate the means and methods for achieving policy objectives and determines the extent to which policy objectives will be achieved. This requirement means more than mechanically directing others in the name of the employer but, rather, requires an employee to have meaningful authority to carry out management policy. *See Jemez Valley Public School*, *supra s*. Additionally, as made express with the 2020 amendments, 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. *See* § 4(N) (Amended 2020).

The test for "supervisor" under§ 4(T) is well-established – it is a rigorous one and uses a three-pronged approach. 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
- 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 duties supposed to be supervisory in nature are such that the disputed employee:

- performs merely routine, incidental or clerical duties; or
- only occasionally assumes supervisory or directory roles; or
- performs duties which are substantially similar to those of his or her subordinates.

If the duties performed meet the above criteria the employee is not a "supervisor" as defined by the Act. Finally, even if the employee meets the foregoing criteria, he or she will not be a supervisor if he or she is:

- a lead employee; or
- an employee who participates in peer review or occasional employee evaluation programs.

See Jemez Valley Public Schools (identifying the three-part test embedded in the definition).

In all cases, unit determinations regarding statutory exclusions must be based on actual duties performed, rather than on written job descriptions or standard operating procedures manuals that merely reflect expectations that may not materialize. This is to avoid denial of statutory rights to classes of employees covered under PEBA. *McKinley County*, 1 PELRB No. 15, *supra*.

With these standards in mind, the following relevant findings are found based upon a preponderance of the record evidence, meaning they are more probably true than not. *See*

MCFUSE Local 3313 v. Gallup McKinley County Schools, 5-PELRB-2026 (defining the burden of proof by the preponderance of evidence), citing *Foster v. Bd. of Dentistry*, 1986-NMSC-009 at ¶10; *Campbell v. Campbell*, 1957-NMSC-001 at ¶24); and NMRA 13-304 (uniform jury instruction).

FINDINGS OF FACT

Overview of the Workplace

1. AFSCME Council 18 is a labor organization as defined under the PEBA; Otero County is a public employer as defined under the PEBA; and the PELRB has subject matter and personal jurisdiction to hear this matter.
2. The County's Detention Center has approximately 21-22 Detention Officers (DOs), Corporals, Sergeants and Training Officers (TOs), which the Union seeks to represent. (Petition and Employee Listed of April 28, 2026.)
3. At present, the Sergeant and Training Officer positions are vacant. (Testim, *passim*.)
4. The chain of command at the Detention Center, from lowest to highest, is: (1) detention officer, (2) Corporal, (3) Sergeant (vacant), (4) Lieutenant, (5) Captain, (6) Deputy Director (vacant), and (7) Director. (Co. Ex. 1, Organizational Chart; Un. Ex. C, Job Descriptions for each position.) Thus, there are four levels of supervision and management above the ranks of corporal and/or sergeant, but at present that includes only one Lieutenant, one captain, and the Director.
5. The Detention Center is operated by an "Admin shift" that works from Monday through Friday, 6:00 a.m. to 5:00 p.m.; and two 12-hour rotation shifts a day, which run from 7:00 a.m. to 7:00 p.m., or 7:00 p.m. to 7:00 a.m. The 12-hour shift rotations include Shifts A, B, C and D. Every two months, the Detention officers and staff working day and nighttime shifts alternate. Each shift consists of five to seven (5-7) employees. (Co. Ex. 1, Call Roster; Terrazas, Wiley and Inzurriaga testim.)
6. "Administration" in the Detention Center includes the Lieutenant, Captain, the Deputy Director when there is one, and the Director. (Wiley and Inzurriaga testim.) There is no "administration" or staff above the rank of Sergeant (or corporal, presently) on site during 7:00 p.m. to 7:00 a.m. shift and they and Corporals are empowered to make some operational decisions in Administration's absence. (Terrazas and Inzurriaga

testim.)

7. However, much of the job duties of Detention Center Officers regulated by Post Orders, which are drafted by the Captain, and address the following:
   - Booking;
   - Master control;
   - Pod control;
   - Roving officer duties;
   - Shift supervisor duties; and
   - Transport.

   (Terrazas testim; Un. Ex. E, Post Orders.)
8. If a situation arises that is not covered by a policy or post order, the Corporals or Sergeants will call the Lieutenant if one or the Captain, moving up the chain of command as needed, during regular Administration hours. After hours, they will call the "on call supervisor", a role or duty which alternates between a Lieutenant, Captain or Director, currently. (Terrazas, Wiley and Inzurriaga testim.; *see also* Un. Exs. D-E, Detention Center Policies and Post Orders.)
9. Time sheets and schedules are created and distributed by the Captain. (Terrazas testim.)
10. Ultimate decisions on hiring, promotion, and discipline above counseling and written warnings are made by Administration in consultation with County HR. In the case of discipline, the input of the employee's "shift supervisor" will usually also be considered. (Terrazas, Wiley, and Inzurriaga testim.; *see also* Sisler testim.) Serious discipline such as terminations also require County Manager approval. (Sisler testim.)[9]
11. The technical "shift supervisor" is the highest-ranking Officer on a shift, which could be a Corporal or a Sergeant, or a Senior Officer. The shift supervisor, but usually the Corporals and/or Sergeant, sign off on relevant paperwork; put in any needed work orders, which is rare; and generally "fix things" that occur on a given shift, be they

[9] The Director testified credibly about County Manager approval being required for higher levels of discipline, and that Administration usually considered the shift supervisor's input, because that testimony was facially plausible and reasonable. However, she spoke incredibly as to Corporals and Sergeants being authorized to issue written reprimands on their own, and that disciplinary decisions were truly "collaborative" in nature between shift supervisors and Administration, such as to rise to the level of an "effective recommendation". Instead, on those points, the undersigned instead credits the contrary testimony of Inzurriaga and the Union witnesses.

inmate, employee, or facilities related. The Corporals and Sergeant can also direct Master Control to take over Pod Control in the event of an emergency. (Wiley and Inzurriaga testim.)

12. The Detention Center has a separate office for the Corporals and Sergeants, referred to as the "supervisor's office", where they can prepare or complete paperwork, review camera footage as needed, etc. In practice, however, these positions generally have to be present on the floor every day and they do not typically spend a lot of time in those offices, although it may vary by day or individual. [10] (Inzurriaga testim.; *see also* Co. Exs. 20-21.)

Corporals' Daily Job Duties

13. Corporals are paid $1.35 to $1.50 more per hour than regular Detention Officers (DOs).
14. The basic job function or responsibility of the Corporal as distinguished from line Officers, is that they are responsible for ensuring that policies and post orders are followed and daily duties are performed, while they largely work alongside the Officers. (Wiley and Terrazas testim.; *see also* Un. Ex. E, Post Orders; Co. Ex. 2, Corporal Job Description.)
15. Additionally, the Corporals' day begins with a 10 to 15-minute shift change or "pass down" meeting where information is relayed to the incoming shift concerning any call-outs/call-ins, or special issues. This meeting is typically led by the shift supervisor, which is usually the shift Corporal or Sergeant if one; and in rare cases it will be led by a senior DO. (Inzurriaga testim.)

[10] Terrazas testified that approximately 80-90% of corporals' work was the same as for DOs but that is called into question by two-days' worth of video (24 hours, 2 shifts, on June 1-2, 2026) of Terrazas sitting in the "supervisor's office" engaged in different duties from his subordinates (primarily paper and computer work), and another time standing watching Officers pass out trays during meal time. (Sanchez testim.; Co. Exs. 20-21, videos and summaries, admitted over Petitioner's objection.) This potentially undermined Terrazas' credibility yet he was not recalled to offer any explanation or rebuttal. Nonetheless, the preponderance of the other reliable evidence is still that the Corporals – like Sergeants, *see supra* – spend a majority of their time doing the same job duties as DOs, and two-days' worth of video out of a year is of limited relevance. It did corroborate Captain Sanchez's expressed expectation and past personal experience as a Sergeant, of spending an entire shift working in the office. However, the record otherwise indicates that the Captain was channeling expectations of independent judgment based on his time as a Corporal, four to five years ago, when he was assigned responsibility to write or update policies and such. There is no basis to infer under this record that the two days in June 2026 were representative of the average day today across, say, a year, particularly given the large number of positions that are currently vacant at the Detention Center.

16. Additional daily duties, functions or responsibilities are essentially the same as those of their subordinates, and include the following, although there may be some small variation from day to day:

- Head counts four times a day (two per shift) (Co. Ex. 15)
- Whites collected
- Pass out ice
- Pass out medicine, two and sometimes three times a day
- Pass out razers two times a week
- Pass out hair clippers on the weekend
- Handing out trays at mealtimes
- Do rounds or security checks (20-30 minutes each, performed every hour, so 12 per shift)
- Special management checks (e.g., special populations such as medical, segregated, etc. – 5-10 minutes each, every half an hour, so 24 per shift)
- Recreation time (inmate movement and management)
- Transport
- Attend a quarterly "shift supervisor meeting" (previously monthly)
- Verify through paper or computer files that everyday tasks have been completed

(Terrazas, Wiley, Inzurriaga, and Sisler testim.)

17. Among these duties, only those on the "pink sheets", daily items such as "razer pass out", and the Log review, are specifically performed or overseen by the Corporal. During most of their shift, the Corporals are doing "essentially the same" functions as the DOs, although they are simultaneously "overseeing" the DOs' performance of pat downs to ensure there is no contraband, and ensure safe and proper tray passing etc., for compliance with post orders and Detention Center policy. (Wiley and Inzurriaga testim.; *see also* Sanchez testim., that he had "no reason to disbelieve" that Corporals and/or Sergeants do the same tasks as Officers most of the time.)
18. When there is an issue with an inmate, the observing Officer writes up a report; the Corporal reviews and issues the report; and the Corporal briefs the Lieutenant or Captain if needed. (Wiley and Inzurriaga testim.)
19. Jobs unique to Corporals include general oversight, completing or reviewing several different reports, coordinating the shift, attending the shift supervisor meetings when held, and doing the pass down meeting (Terrazas, Wiley, and Inzurriaga testim.; Co. Ex. 12, Shift Supervisor Oversight Form; Co. Ex. 13, Log Review; Co Ex. 16, Booking Release Authorization.) The Captain created the Shift Supervisor Oversight Form, and Corporals simply check off items while doing a walk-through, one time each shift. Corporals also

fill out the Log Review form and review and sign Booking Authorizations, the latter of which was created by the County Attorney. However, these forms or reviews thereof do not have to be completed by a Corporal, and can be completed by a senior Officer as needed.[11] The booking release form is reviewed by the shift supervisor or Corporals/Sergeants to verify through the jail management system that the release paperwork is correct.[12] (Terrazas, Wiley, Inzurriaga, and Sisler testim.; Co. Exs. 12, 16.)

20. Corporals also have duties associated with scheduling, but they are largely limited to marking off when someone calls in sick or unavailable, and seeking a replacement. The Captain sets the schedule. Then, when filing unexpected vacancies, the Corporals may call down a list, or they may be selective based on their knowledge of the various Officers' schedules and inclinations. Corporals are not authorized to mandate overtime, but they do sign off on it after the fact. They also initial off on leave requests on a first-come, first-served basis, although the Captain is the ultimate decision-maker and can authorize more than one employee to be off at a time. (Terrazas, Wiley, and Inzurriaga testim.)
21. Corporals do not develop or change post orders or Detention Center policy today, although in theory they can (and in the past some did) recommend changes at the quarterly supervisor meeting. (Terrazas, Wiley, Inzurriaga, and Sanchez testim.; s*ee also* Un. Exs. D and E, Policies and Post Orders, respectively.)[13]
22. Corporals have limited or no duties related to hiring, promoting, and disciplining regular officers. Once Cpl. Terrazas was involved in hiring, but he has never seen that occur otherwise, and it just involved checking off items and rating the candidates from 1 to 5 using a premade form and questions. Corporals have no authority to promote, demote officers, and there is little or no evidence that they can effectively recommend them

[11] There were a variety of subtle differences in testimony on most issues that were not material or irreconcilable. On this point, however, several witnesses credibly testified that even regular officers could sign off on the Log Review. Therefore, the undersigned discredits the Director's testimony that senior officers do not sign off on forms such as Co. Ex. 12 because contradicted by more credible testimony and the documentary record.

[12] This requirement arose as a result of a lawsuit from a previous "bad release". (Sisler testim.)

[13] Inzurriaga testified that he never recommended a policy change at the supervisor meetings, and the Union witnesses did not indicate they had ever recommended a policy change. In contrast, Cpt. Orlando Sanchez testified that he did write and amend policies when he was a Corporal, many years prior. He most recently revised the post orders as the Captain, in June of 2025. (Testim.)

either.[14] They can issue verbal counselings documented in writing. They can also draft and recommend written reprimands, but Lieutenant issue or effectively recommend them, and a higher-level administrator or manager recommends and/or issues discipline greater than that. (Terrazas, Wiley, and Inzurriaga testim.; *see also* Co. Ex. 5, Disciplinary Citions)

23. Corporals have more duties related to corrective actions such as counseling, issuance of PIPs or assignment of additional trainings, and evaluations, but that is also somewhat limited. Evaluations can occur up to four times a year and can involve weekly work, but they involve pre-made forms to give ratings from 1 to 5. Similarly, Cpl. Terrazas, for instance, has only been involved in issuance of a performance improvement plan (PIP) one time, and then, it was drafted by Administration and he was simply directed to issue it. (Terrazas, Wiley and Inzurriaga testim.)
24. Corporals can issue inmate discipline after write up by the observing DO. (Wiley testim.)
25. When promoted from DO to Corporal, the job duties do not change significantly. This is because everyone's duties on a given day are dictated by the schedule, post orders, and "white board" instructions or "as needed" tasks. The schedule and post orders are created by the Captain. The white board is created by Administration, often from information or plans derived at the supervisors meeting, and it may be but is only "sometimes" revised by Corporals. The Corporals (and Sergeant for that matter) will have to spend an unknown and variable period of worktime delegating the various tasks listed on the white board or in post orders or policy, but there is no evidence suggesting that this entails more than a *de minimis* amount of shift time.[15] (Terrazas, Wiley, Inzurriaga, and Sanchez testim.)

[14] Testimony of Wiley and Terrazas indicates that they could not effectively recommended anything higher than verbal counselings. Inzurriaga essentially corroborated this by testifying that Corporals or Sergeants could "recommend" suspensions and terminations "up the chain of command" but that they could "effectively recommend" only "up to a PIP or additional training." Director Sisler agreed they had authority to issue verbal warnings but maintained they could also issue written reprimands, which claim was incredible because contradicted by the preponderance of other more reliable evidence.

[15] Union witnesses testified that delegation is largely unnecessary as the Officers know and self-select their jobs and posts, and take care of known tasks and responsibilities. Captain Sanchez testified at length on the importance and gravity of proper delegation and general oversight, but he did not testify that delegation and oversight (alone or with or other regular supervisory duties) consumes a majority of a Corporal's or Sergeant's worktime, or that Corporals such as Terraza were counseled or corrected for allowing Officers to choose their post assignment, or for inadequate delegation of white board tasks.

26. The biggest change from Officer to Corporal is responding to incidents in which an inmate requests to speak with a supervisor. Other unique duties include being responsible for "a lot of forms", handling any and all officer issues that may arise, and issuing on-the-spot corrections or counselings. (Inzurriaga testim.)
27. As a matter of practice, Corporals are not required to have all of the training or certification stated in their job description. (Wiley testim.; and Co. Exs. 2-3, Job Descriptions.)
28. The position of Corporal does exercise "some" direction and/or delegation of work for or to subordinates, as stated in the job descriptions. (*Id*.) However, the majority of Corporals' day-to-day job duties are the same as those of regular DOs, even if they are expected to model and coach for compliance with requisite standards as they work alongside them. (Terrazas, Wiley, and Inzurriaga testim.)

Sergeants' Daily Job Duties

29. The Sergeant position is vacant at present but most of the witnesses had previously been Sergeants so the record adequately established the daily job duties of this position.
30. When there are Sergeants, they make $3.25 more per hour more than DOs, and they also do the pass down meetings unless otherwise engaged. (Inzurriaga and Sisler testim.)
31. The testimony did not show that their duties would be significantly different from those of Corporals, if employed.[16] (*Compare* Wiley, Terrazas, Inzurriaga and Sanchez testim.)
32. When a shift has a Sergeant assigned to it, they – like Corporals – do the tasks identified above that are performed by all line DOs, as well as the duties identified above that are performed by Corporals. (Wiley testim.)
33. Additionally, like Corporals, Sergeants can issue inmate discipline; and can issue verbal counseling of employees; while written employee reprimands are issued by or in the presence of a Lieutenant. As Sergeants, Wiley and Inzurriaga both once recommended

[16] Inzurriaga testified that his duties changed "quite a lot" when he was promoted from Corporal to Sergeant. He further testified that "Corporals essentially run all operations after hours", which Cpt. Sanchez and Director Sisler echoed, stating that Corporals and Sergeants are "responsible for everything". However, the only additional or unique Sergeant duties identified by Inzurriaga were making phone calls, updating segregation books, conducting a log review, and reviewing video footage. He also did not give any estimate of how many hours are spent on unique supervisory duties or duties involving the exercise of independent judgment. Similarly, Cpt. Sanchez also did not testify that they spent a majority of their time engaged in supervisory tasks or tasks involving the exercise of independent judgment.

demotion of the other to Director Sissler, but those recommendations were not shown to lead to collaboration between the employees and the Director, and the emmployees' recommendations were not acted upon. (*Compare* Wiley, Inzurriaga and Sisler testim.)

34. Sergeants are also involved in evaluations like Corporals, which can occur up to four times a year and entail weekly work. (Wiley, Inzurriaga, and Sisler testim.)
35. Like Corporals, Sergeants also sign off on leave requests that are approved by administration, meaning Lieutenant and higher; and sign to confirm that any claimed overtime was worked. (Wiley testim.; Co. Ex. 11.)
36. The job description for Sergeants, like that for Corporals, includes many tasks that are performed by DOs as well; and the few duties that are unique to Sergeants (or Corporals and Sergeants, in some cases) do not ordinarily require significant duty time. (Wiley testim.; and Co. Exs. 2-3.)
37. Additional duties acquired with the promotion from Corporal to Sergeant include making phone calls, making sure the segregation books are updated, and conducting any investigations. (Inzurriaga testim.)

Training Officers' Daily Job Duties

38. The Training Officer position is presently vacant and very little evidence was provided regarding the Training Officers' daily or assigned job duties. (Sanchez and Sisler testim.; *see also* Co. Ex. 4, Training Officer Job Description.)
39. The record does establish, however, that the Training Officer will conduct training that implements management's policies and priorities; and they will also confidentially investigate allegations against staff and in-mates for violation of the Prison Rape Elimination Act (PREA). (Sanchez testim.)

Statewide Trends

40. AFSCME represents at least 16 different jails and prisons (eight (8) of each, respectively) of varying sizes. At nearly all of these, the DO or Correction Officer (CO) bargaining unit includes Corporals and/or Sergeants. These other bargaining units are as follows:
    - Luna County – Corrections Officers (Cos), Corporals, Sergeants and Lieutenants;
    - Grant County – COs, Corporals, Sergeants, and the Training Officer (TO);
    - Doña Ana County – Detention Officers (DOs), Sergeants, and TO;
    - Valencia County – no Sergeants in the bargaining unit; were not petitioned for;

- Bernalillo County MDC – do not have Corporals; includes DOs, Sergeants, Lieutenants, and TOs;
- Santa Fe County – DOs, Sergeants, Lieutenants, Captain, and TO;
- Taos County – COs and Sergeants; union did not petition for Lieutenants and they no longer have Corporals; and
- Rio Arriba County – is not a paramilitary structure, and its Corporals and Sergeants are supervisors.

(Robley testim.)

41. Of the foregoing, the Bernalillo County MDC is the largest and least to the Otero County Detention Center; and Doña Ana County's is also large at 60 or staff or Officers. The Valencia County Detention Center is the most comparable sized to Otero's. (*Id*.)
42. Depending on size of the workforce, the assignment and duties of first line supervisors or Lieutenants will vary significantly. (*Id*.)

PARTIES' POSITIONS

The Union argues that all other similar detention and correctional facilities in New Mexico include Corporals, Sergeants and Training Officers, and some even include Lieutenants, so excluding those positions here would make the Otero County Detention Center "unique". Additionally, the petitioned for employees are "non-exempt" under the Federal Labor Standards Act (*i.e.*, the "FLSA", which governs minimum and overtime wages), making it less likely that they are supervisory in fact. (Un. Post-hearing Brief at 2, citing *NMCPSO & County of Santa Fe*, 78-PELRB-2012, Recommended Decision, at 10-11.)

The Union notes that even the County's own witness, Uriel Inzurriaga, admitted that Corporals and Sergeants are not exempt from officer duties, and that their role was "essentially the same" when doing these tasks. (*Id*. at 5, citing Inzurriaga Test., Audio Part 3, at 45:50-45:58.) Nor do they have effective hiring, promoting, firing or discipline authority of any note. Additionally, most of the specific tasks performed by Corporals and Sergeants that are different from DO tasks are still only clerical or administrative in nature, so do not require the exercise of independent judgment and do not implicate overarching policy and operational concerns. *Id*. at 5-18. As both Union witness Wiley and County witness Inzurriaga all testified, the major difference between Officers and Corporals or Sergeants is doing the pass down briefing; and dealing with inmate grievances or discipline, which are not supervisory tasks under the PEBA. (Citing Wiley

Test., summarized by H.E., Audio Part 2, at 1:37-2:03; Inzurriaga Test., Audio Part 3, at 29:12-29:57.)

Under this factual record, Corporals, Sergeants and Training Officers do not devote a majority of their working time to supervisor duties or meet any of the other elements of § 4(T) of the PEBA. Instead, they perform essentially the same functions as DOs while only occasionally performing supervisory duties. While they may be "supervising" in the popular or common sense, the word is a term of art and very specifically defined under the PEBA, and these employees do not meet its terms. (Un. Brief at 8-11, citing *AFSCME v. N.M. Dept. of Corrections,* D-202-CV-2013-01920, (May 15, 2014); *Local 2059 Santa Fe Firefighters Assoc. & City of Santa Fe*, 1-PELRB-6 (1995); *NMSU POA & NMSU*, 1-PELRB-13 (1995); *McKinley County Sherrif's Assoc. FOP & McKinley County*, 1-PELRB-15 (1995); *CWA & Dona Ana County,* 1 PELRB No. 16 (Sept. 15, 1995); *Local 7911, CWA and Dona Ana Deputy Sheriffs' Association, FOP, and Dona Ana County*, 1-PELRB-19 (1996); *N.M. Coalition of Public Safety Officers, Local 7911, CWA, AFL-CIO & Town of Bernalillo*, 1-PELRB-21 (1997); and *AFSCME & NMCD*, 8-PELRB-2012.)

Additionally, Corporals, Sergeants and Training Officers does not meet the elements of a "management employee" under § 4(N) of the PEBA, because they are not "primarily engaging in executive and management functions", or 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." (Un. Brief at 11-14, citing *NEA-Jemez Valley & Jemez Valley Public Schools*, 1-PELRB-10 (1995); *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974); and *NLRB v. Yeshiva Univ.*, 444 U.S. 672, 682 (1980).)

As for whether the positions are confidential, they are not. County witnesses themselves admitted that these positions do not handle confidential information related to collective bargaining. (Un. Brief at 1, citing Audio Part 3, at 19:05-19:46.)

The County argues that the Corporals, Sergeants, and Training Officer are excluded as supervisors, managers, and/or confidential employees; the Union's witnesses are not credible so should be disregarded; the evidence of other bargaining units is not relevant so should be disregarded; and that vacant positions, such as those of Sergent and Training Officer, should not be included at all because those future employees cannot express their intent or desire to be represented.

As evidence of the managerial nature of the Corporal and Sergeant positions, the County points to the facts that they are in charge of the entire facility after business hours; the Director asks their opinion when they call a higher-ranking officer for guidance; and their job description's denotation that the Director may delegate additional supervisory duties to them. (Resp. Post-Hearing Brief at 4.)

As evidence of the Corporal and Sergeants being supervisors, the County emphasizes that they customarily and regularly direct the work of two or more employees, since they are usually the shift supervisor as the ranking officer; and their roles and use of independent judgement in effectively recommending discipline, approving or disapproving leave, filling shift shortages, handling various complaints from in-mates and rank and file Officers, and doing the pass-down meeting between shifts. (*Id*. at 5-6, 10, citing *Hobbs Prof'l Firefighters Ass'n and City of Hobbs*, 32-PERRB-2024 (that attendance at such meetings "is the clearest example of how the [positions] administer or effectuate management policy by literally "passing on" to others in the station management['s] wishes for each shift's activities").

The County also points to their role and exercise of independent judgment in working alongside or shadowing Officers, to observe and correct them; making post assignment; issuing lower level discipline or implementing higher level discipline and PIPs; overriding the master control; completing and reviewing Officers' paperwork, including the booking and release authorizations; performing special duties upon assignment, such as updating the site book or conducting investigations; attendance at the quarterly supervisor's meeting. (*Id*. at 7-12; Co. Ex. 16). It also points to their higher salary; Captain Sanchez's expression of expectations regarding constant oversight responsibilities and making sure that everything is "fixed" and all work orders completed; and the Director's testimony that she found the position of Sergeant nearly overwhelming when she was first promoted to it years ago. (*Id.* at 12-13, 16.)

In contrast, the County urges that the testimony of the Union witnesses should be disregarded as less credible, pointing to the conflict between Terraza's testimony and Co. Exs. 20-21; and Wiley's relative short time as either a Corporal or Sergeant, at six (6) months each, before leaving his employment over frustration with Administration. (*Id.* at 14-15.) It also argues that evidence of other bargaining units is irrelevant in the same way that job descriptions are. (*Id.* at 16.)

As evidence of the confidential nature of the Corporals and Sergeants, the County points to the Director's testimony that if collective bargaining between a Union and the County resumed, based on her prior experience with collective bargaining at the Detention center, she would need Corporals and Sergeants as part of management's bargaining team to develop management's bargaining proposals and strategy, thereby making them confidential employees. (*Id.* at 13, citing Hearing Audio Part 4 at 34:57-35:25; and *American Federation of Teachers Local 4212 and Gadsden Independent School District*, 03-PELRB-2006 (May 31, 2006).

Next, the County argues that Training Officers are excluded because they implement management's policy via training, grading, and assigning trainee Officers; and also because they conduct confidential PREA investigations that would put it in conflict of interest with bargaining unit members. (*Id.* at 13-14.)

Lastly, the County argues that the positions of Sergeant and Training Officer should be excluded in any event, because those positions are presently vacant, and the employees cannot therefore express their interest. It analogizes to a prior accretion case that excluded vacant positions. (*Id.* at 17, citing *AFSCME Local 3022 and ABCWUA*, PELRB Case No. 318-25 (dismissing joint petition for accretion because the position was not yet filled and no showing of interest could therefore be provided).

ANALYSIS

I. The Union does not bear the burden to disprove exclusion

As a threshold matter, we address the burden of proof. PELRB rules expressly state that no Party bears the burden of proof in representation matters, except for petitions for clarification, where the Petitioner bears both the burden of proof and the burden of going forward, like Complainants in PPCs:

> 11.21.1.22. BURDEN OF PROOF:
>
> A . Except in unit clarification proceedings, no party shall have the burden of proof in a representation proceeding. Rather, the director in the investigatory phase or the hearing examiner shall have the responsibility of developing a fully sufficient record for a determination to be made, and may request any party to present evidence or arguments in any order. In a unit clarification proceeding, a party seeking any change in an existing appropriate unit, or in the description of such a

unit, shall have the burden of proof and the burden of going forward with the evidence.

B. In a prohibited practices proceeding, the complaining party has the burden of proof and the burden of going forward with the evidence.

See 11.21.1.22 NMAC; *see also* NMAC 11.21.3.38(B) (that an accretion petition is a clarification petition).

The County nonetheless argues, by way of analogy to a prior accretion case, that the Union should bear an affirmative burden to prove that the positions at issue are not statutorily excluded, as part of establishing that they are appropriately included therein. *See AFSCME Council 18 and Santa Fe County*, 5-PELRB-2015.

However, the 2015 case cited to merely held that for accretion petitions the burden is on the Union as Petitioner to establish the elements stated in NMAC 11.21.3.38. Thus, that part of the decisions simply rephrased existing law established by the express terms of the PELRB rules and the weight of PELRB precedent: to wit, that no party bears the burden of proof in representation matters, except for clarification/accretion petitions. This is because in the case of accretion, a Petitioner seeks a change to the *status quo*. It is logical and natural in that case to impose on Petitioner the initial burden of production and ultimate burden of proof. That rule, however, does not apply in the case of other representation petitions.

Nonetheless, in any litigated matter, the initial burden of production as to claims or affirmative defenses – such as statutory exclusion – is always placed on the proponent as a practical matter. *Cf.* 11.21.1.22 (distinguishing between the burdens of proof and initial production or moving forward); and *AFSCME Council 18 v. HSD*, No. D-101-CV-2012-02176 (Jun. 14, 2013; in re 59-PELRB-2012, Case No. 151-11) (affirming placement of the burden of proof for affirmative defenses on the Respondent, in a PPC). It is from that production of evidence that the Hearing Examiner will make their findings regarding appropriate unit composition.

II. Training Officer was not shown to share community of interest with other petitioned-for positions

Beginning with the easiest substantive issues first, the undersigned concludes that there is not a preponderance of evidence in the record demonstrating that the position of Training Officer shares a community of interest with the Officers, Corporals, and/or Sergeants under § 13 of the PEBA; and they are therefore not appropriately included in the bargaining unit.

There is little evidence in the record about the Training Officer except that they conduct PREA investigations and the position is currently vacant. Given the lack of overall evidence about the position other than the potential for conflict of interest created by PREA investigation duties, there is not a preponderance of evidence that this position shares a community of interest with the others.

For instance, it is inferred from the record that factors they do or would share in in common are typical to all Detention Center and/or County employees, while they would or may have differences in work hours or location; separate supervision; dissimilar qualifications, training and skills; and/or differences in job functions. *See NEA-Belen and Belen Fed'n of School Employees and Belen Consol. Schools*, 1 PELRB No. 2 (May 13, 1994) (adopting *Kalamazoo* factors, including these); and *USWA and Gila Reg'l Med. Center and Grant County*, 1 PELRB No. 14 (Nov. 17, 1995) (that similarities between employees regarding their hourly compensation, work hours, benefits, lack of history of collective bargaining and, to some degree, supervision, are not sufficient by themselves to create a community of interest, where such commonalities are shared by all of the employees and are not unique to the petitioned-for group").

Because the Training Officer position was not shown to share a community of interest with the Detention Officers and other petitioned-for positions, they are not appropriately included in the bargaining unit; and it is not necessary to address whether they are confidential, supervisory, and/or management positions.

III. There is insufficient evidence to support the determination that the Corporals and/or the Sergeant are confidential under the PEBA

Next, the undersigned concludes there was insufficient evidence presented to support a finding and conclusion that the Corporal and/or Sergeant positions are confidential in nature, under § 4(G) of the PEBA.

Respondent correctly points out that where the employer has not engaged in collective bargaining in the past, the Board will utilize a reasonable expectation test for analyzing confidential status. *NEA and Jemez Valley Public Schools*, 1 PELRB No. 10 (May 19, 1995). However, even giving Respondent the benefit of the doubt about future negotiation needs, the Director was not credible in the broad and self-serving claim that she would depend on Corporals and/or Sergeants in developing the Department's bargaining positions.

This was a vague and conclusory statement and it was not explained what necessary and confidential information the Sergeants and Corporals were privy to, or that the Captain could not provide. Additionally, other County witnesses admitted that the positions at issue do not handle confidential information related to collective bargaining. (*See, e.g.*, Audio Part 3, at 19:05-19:46.) At the same time, as discussed and/or noted above, the Director is rendered less credible by several patent misstatements, and unlike Terrazas, her testimony was not corroborated by other and more credible evidence.

Accordingly, Corporals and Sergeants are not excluded as confidential employees.

IV. There is insufficient evidence to support the determination that Corporals and/or the Sergeant are managers under the PEBA

Next, we turn to whether Corporals and/or Sergeants are managers under § 4(N) of the PEBA.

First, as with questions of any status, it noted that evidence of statewide trends are of limited utility because fact dependent nature of the inquiries. Instead, we assess these employees' daily duties against the requirements of § 4(N) to determine whether they (1) are primarily engaging in executive and management functions, and (2) have responsibility for developing administering, or effectuating management policies. *See* § 4(N) (Amended 2020).

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 to create, oversee, or coordinate the means and methods for achieving policy objectives, and determine the extent to which policy objectives will be achieved. This requirement means more than mechanically directing others in the name of the employer but rather, requires an employee to have meaningful authority to carry out management policy. *Jemez Valley Public Schools*, 1 PELRB No. 1, *supra*. Additionally, as made express in the 2020 amendments, 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.

In this case, the preponderance of the evidence is that Sergeants and Corporals carry out and enforce policies and post orders, but mechanically. Specifically, there is little or no evidence that they do more than make on-the-spot corrections and adjustments of Officer conduct and job

performance, including issuance of lower level discipline and making recommendations for written reprimands or higher discipline that may or may not be effective. Additionally, there is no evidence that these positions have been involved in creating, overseeing or coordinating the means and methods for achieving the Detention Centers policy objectives for many years; or have ever determined the extent to which such policy objectives will be achieved. Instead, the record reflects that "Administration", including the Lieutenant, Captain, Deputy Director and/or Director constitute the Detention Center's management under the PEBA.

Accordingly, Corporals and any Sergeants are not excluded as management employees.

V. There is insufficient evidence to support the determination that Corporals and/or the Sergeant are supervisors under the PEBA

Finally, we turn to the core and most disputed issue: whether Corporals and/or Sergeants are supervisors under§ 4(T) of the PEBA.

As described at the outset, the test for "supervisor" under§ 4(T) is a strict one and it uses a three-pronged approach. First, the employee must (a) devote a majority of work time to supervisory duties; (b) customarily and regularly direct the work of two or more other employees; and (c) have authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively. Second, if these requirements are met, we examine whether the duties are in fact "supervisory" in nature, meaning they involve the exercise of independent judgment; or whether, instead, the disputed employee (a) performs merely routine, incidental or clerical duties; or (b) only occasionally assumes supervisory or directory roles; or (c) performs duties which are substantially similar to those of his or her subordinates. If any of the latter three criteria apply, the employee is not a "supervisor" as defined by the Act. Finally, even if the employee meets all of the foregoing criteria, he or she will still not be a supervisor if he or she is: (a) a lead employee; or (b) an employee who participates in peer review or occasional employee evaluation programs. *See Jemez Valley Public Schools*, 1 PELRB No. 10, *supra*; *see also AFSCME Council 18 v. Corrections Dep't*, D-202-CV-2013-01920 (May 15, 2014; in re: 2-PELRB-2013, Case No. 311-11) (affirming that use of independent judgment is required for an activity to qualify as a "supervisory duty" under PEBA and that the lieutenants there did not exercise independent judgment a majority of their work time)

Here, the preponderance of the evidence is that Corporals, and the Sergeant(s) when the position is filled, are primarily engaged in performing the same work as their employees for the majority of their work time, although they may fill out or review routine Detention Center paperwork regularly, incidentally correct their subordinates, and participate in cooperative decision-making programs on an occasional basis. These positions at the Otero County Detention Center function more like lead employees and the sheriff's department sergeants in *McKinley County Sheriffs Ass'n, FOP* and *McKinley County*, 1 PELRB No. 15 (Dec. 22, 1995). There, the sergeants were determined to be lead employees because – like here – the sergeant performed the same duties as the deputies; expedited or facilitated the performance or completion of those duties; explained tasks to new workers; and their supervisory functions were routine and/or incidental to the duties performed as a member of the work shift. *Id.*

This determination is buttressed by the facts that (a) Corporals' and Sergeants' are largely exercising their technical and professional judgment as detention personnel in overseeing the DOs while working alongside them; and (b) the employer's policies and post orders largely detail what needs to be done in a given instance, constraining their judgment to such a degree that the direction of others does not rise to the level of supervisory authority. *See AFSCME Council 18 v. Corrections Dep't*, 2-PELRB- 2013 (Jan. 23, 2013); citing *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001) (state corrections lieutenants did not meet at least two of the three criteria required by § 4(T), devoting a majority amount of work time to supervisory duties and having hire/promotion/fire authority, and they arguably do not customarily and regularly direct the work of two or more other employees because of the absence of independent discretion in their direction of their subordinates except in rare circumstances).

As observed in *McKinley County* (Dec. 22, 1995), *supra*, an important factor in determining supervisory status is whether the employee is exercising independent judgment or routinely ensuring that procedures and policies are followed. Where an employee is merely relaying instruction from a above or ensuring that subordinates adhere to an established procedure, that individual is not engaged in supervisory duties under the Act. *Id.* (determining that a police lieutenant was appropriately excluded as a supervisor where his or her duties went beyond simply ensuring established procedures and policies were followed; and that they instead used independent judgment in directing employees such activities as planning work schedules,

determining types and numbers of employees to assign to each shift, and reassigning calls issued by telecommunications).

Although it was not proven that Corporals and/or the Sergeant spend 80-90% of their day engaged in the same work as the regular Detention Officers, as Terrazas testified, that was not required. Additionally; the undersigned ultimately found the rest of the Union's evidence to be credible and more persuasive than that of the County, particularly given that County witness, Inzurriaga largely corroborated the testimony of the Union witnesses. Notably, Wiley and Inzurriaga were both credible witnesses and their testimony was largely congruent, and it also corroborated that of Terrazas. In particular, Inzurriaga's testimony reflected that the Sergants and Corporals have more responsibilities (and hence greater pay), but that most of the duties are of a routine and/or clerical nature, such as reviewing and completing forms, making telephone calls, and making daily assignments according to the white board, policies, and post orders. *See NMCPSO/CWA Local 7911 and Rio Rancho Police Dep't*, 4-PELRB-2009 (Apr. 6, 2009, in re: Case No. 319-08) ("routine, clerical or ministerial duties" are duties that do not require the exercise of independent judgment and such duties therefore cannot be supervisory in nature; and it is not sufficient under the PEBA to perform substantially different duties if the majority of the different duties are routine, clerical or ministerial in nature because they do not involve the exercise of independent judgment).

Moreover, the overwhelming weight of the evidence is that if any situation requiring independent judgement arises, the Corporals, Sergeants, and/or senior shift Officer call the Lieutenant, the Captain, or the on-call member of the Administration if after hours.

Although Inzurriaga echoed management testimony that Corporals and/or Sergeants are the "first line before administration", his and others' testimony of actual daily duties show that rather than being first-line supervisors, they are mere lead employees. *See McKinley County Sheriffs*, *supra*; *see also Rio Rancho Police*, *supra* (that a "lead employee" is one who performs the same work as his or her subordinates and who does not engage in distinct and separate supervisory duties that require the exercise of independent judgment). For instance, when asked on redirect, "why corporals or sergeants are needed" if post orders and policy determines all their duties, Inzurriaga testified only that they were needed for "extra circumstances" such as "razer check, cleanliness, and officers not being on their phone." He added that "supervisors are needed at some point" because the facility "doesn't run itself.

This testimony shows that he and the County misunderstand the nature of the PEBA § 4 definitions of supervisor and manager, and PEBA's distinction between supervisors and lead employees. As ruled in *CWA Local 7911 and Doña Ana County*, 1 PELRB No. 16 (Jan. 2, 1996), sergeants are lead workers, not supervisors, where they perform most, if not all, of the duties as those of their subordinates; they explain tasks to them and expedite the work of a shift that is small in number of personnel; their supervisory functions are incidental and occasional; and, for the most part, their exercise of independent judgment and discretion is limited by reliance on such things as standard operating procedures.

Nor does this mean, as County management suggests, that this would leave the Detention Center without supervision, particularly after 5:00 p.m. and on the weekends or holidays. As also ruled in *Doña Ana County*, 1-PELRB-16, including sergeant positions in the bargaining unit does not result in lack of supervision at the facility where those positions do have supervisory duties and responsibilities, but just not enough compared to their overall actual day-to-day duties to meet the statutory definition for exclusion under PEBA.

Indeed, consistent with Mr. Trombley's testimony on statewide trends, it is not at all uncommon to determine that paramilitary sergeants, and even some lieutenants, who perform limited but important supervisory functions are nonetheless non-supervisory under § 4(T) of the PEBA, and share a community of interest with their subordinates. *See, e.g.*, *AFSCME Council 18 v. Luna County*, 9-PELRB-2016 (county corrections lieutenants share a community of interest with the employees in the bargaining unit and did not meet the statutory definitions of management, confidential or supervisory employees under the PEBA); *AFSCME Council 18 v. Dep't of Corrections*, 2-PELRB-2013, *supra*; *N.M. Coalition of Public Safety Officers Ass'n and Santa Fe County*, 78-PELRB-2012 (Dec. 5, 2012) (sergeants accreted into an existing bargaining unit because their actual duties as performed did not meet the three-part test established by the Board); *AFSCME Council 18 v. Corrections Dep't*, 8-PELRB-2012 (in re: Case Nos. 139-11 and 311-11) (state corrections lieutenants are not supervisory, and their inclusion would not render the bargaining unit inappropriate); 9-PELRB-2012, and 60-PELRB-2012 (same case and determination); *N.M. Coalition of Public Safety Officers Ass'n v. Santa Fe County*, 70-PELRB-2012 (county detention center sergeants are not excluded as supervisors); 78-PELRB-2012 (same case, reaffirming); *Doña Ana County*, *supra* (all sergeants other than the operations sergeant were determined to be non-supervisory because they performed essentially the same job duties,

supervisory functions were incidental and occasional and, for the most part, their exercise of independent judgment and discretion was limited by reliance on such things as decision trees and the standard operating procedures manual); and *McKinley County Sheriffs Ass'n*, *supra.* (the county sheriff sergeant functions as a lead employee rather than supervisors under the PEBA).

Nor was it shown that the Corporals and/or Sergeants "customarily and regularly" direct the work of two or more subordinates in the way the PEBA requires. They do usually serve as the senior shift officer on a shift of four to six additional Officers. However, the record does not show that much direction is involved, or even determination of the activities or course of performance of their subordinates, or organizing, energizing, training or leading them. *Disting. Rio Rancho Police Dep't*, *supra*.

The Captain testified about his expectation of active and constant direction of the DO by the Corporals and/or Sergeant, but it is well established that actual daily duties prevail over the employer's bare expectations or visions. *See, e.g.*, *Doña Ana County*, *supra* (an employer's expectation that an employee shall supervise subordinates even when they are performing the same work as those subordinates is not relevant under the PEBA definition, because expectations may not surface or materialize); *McKinley County Sheriff's Ass'n*, *supra* (basing unit determinations on expectations without regard to the actual duties performed could result in the denial of statutory rights to classes of employees); and *NMSU Police Officers Ass'n and NMSU*, 1 PELRB No. 13 (Jun. 14, 1995) (testimony that police sergeants are expected to supervise 100% of the time only reflects the expectation that they will perform supervisory duties whenever called upon to do so; and where, in fact, that expectation only results in the occasional performance or assumption of supervisory or directory roles, the position meets the proviso in the definition for excluding a position from supervisory status for purposes of the PEBA).

Besides not being shown to spend the majority of their time directing the work of two or more and/or otherwise exercising independent judgment, the Sergeants and/or Corporals were also not shown to have authority to hire, promote or discipline other employees or effectively recommend as much. Like the corrections Lieutenants in *AFSCME Council 18 v. Corrections Dep't*, 2-PELRB-2013 (Jan. 23, 2013), the positions at issue here merely report instances of a subordinate's deviation from policies or post orders without a recommendation of any specific level of discipline and all decision-making lies with the Captain, Director and County HR. Similarly, as in *Corrections Dep't*, the positions play no role in the hiring process; and their role

in the promotion process is limited to completing performance evaluations using a standardized form prepared by HR. Accordingly, they are the sort of occasional peer review or evaluation program contemplated by PEBA as not being an indication of supervisory status. *Id.*; *see also* § 4(T) (that "'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").

Accordingly, Corporals and Sergeants are also not excluded as supervisors; and their inclusion in the petitioned-for unit will not create a conflict within the bargaining unit and does not render the unit inappropriate.

VI. Vacant positions are not appropriately included in a newly formed bargaining unit

Despite concluding that Corporals and Sergeants are not statutorily excluded and are appropriately included in the petitioned-for bargaining unit, the inquiry does not end there for the vacant Sergeant position.

Here, because the Sergeant position is vacant, that position may not be included at this time. First, the position's vacancy makes it impossible to obtain any showing of interest from that employee, in violation of PELRB rules and the intent of the Act. *See* NMAC 11.21.2.11 (that a petition for recognition must be accompanied by a showing of interest, which "consist[s] of signed, dated statements…by at least thirty percent of the employees in the proposed unit"). Thus, that position would never have been subject to a "vote" for or against Union representation. Second and closely related, to include vacant positions at the outset of the recognition process would be to functionally impair future employees' rights to democratically express their desire for labor representation, also in violation of the Act and legislative intent.[17] *See* §§ 2 and 5.

Accordingly, the principle and PELRB practice that vacant employees cannot be accreted into an existing bargaining unit applies equally well in the case of a newly formed bargaining unit, and they are therefore appropriately extended to initial petitions. *See, e.g.*, *AFSCME Local 3022*

[17] Although they could later petition for decertification if a member of the Union, that is a far more onerous burden than simply declining to sign an authorization card, and PELRB records reflect no individual employee every mounting a successful decertification petition. *See* PELRB Board Orders.

and ABCWUA, PELRB Case No. 318-25 (dismissing joint petition for accretion because the position was not yet filled and no showing of interest could therefore be provided).

The Union may petition at another time for their representation, if or when the position is filled.[18]

CONCLUSIONS OF LAW

Based on the foregoing, the undersigned makes the following conclusions of law:

1. The Union does not bear the burden to disprove statutory exclusion in this non-accretion representation matter; and the following conclusions are based on findings supported by a preponderance of the record evidence.
2. The Training Officer was not shown to share a community of interest with others in the petitioned-for bargaining unit, so they are not appropriately included in the petitioned bargaining unit.
3. Corporals are not excluded as confidential employees, supervisors, or managers;
4. The Sergeant position is not excluded as confidential, supervisory, or managerial;
5. Corporals and the position of Sergeant share a community of interest with the other Detention Officers in the petitioned for bargaining unit; their inclusion in the bargaining unit will not create a conflict of interest therein; and both positions are therefore appropriately included.
6. However, because the Sergeant position is vacant, that position may not be included at this time.

RECOMMENDED DECISION

Based upon the foregoing findings, legal standards, reasoning and conclusions, the Hearing Examiner recommends that the petitioned-for unit be approved as to Detention Officers and Corporals; and that Sergeants and Training Officers be excluded from the unit description, although the Union may petition at a later time for accretion of the Sergeants.

[18] At that point, the designated PELRB Hearing Examiner may elect to take administrative notice of the findings herein, subject to any new evidence including whether the Sergeant position's daily duties subsequently changed.

To facilitate further processing, the County Detention Center is hereby ORDERED to provide the PELRB and Petitioner with an eligible employee list of non-probationary Detention Officers and Corporals, within five (5) business days of the issuance of this Report.

This is a final determination as to unit composition, and any Party may request Board Review of this Recommendation pursuant to NMAC 11.21.2.22; although the card count and certification processes will continue in the meantime.

ISSUED this 25th day of September, 2026



Pilar Vaile,
Exec. Dir. and Hearing Examiner