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May 27, 2015

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Rachel Brown, Deputy County Attorney  
P.O. Box 276  
Santa Fe, New Mexico 87504-0276

Re: ***NMCP SO v. Santa Fe County; PELRB No. 131-14***

Dear Mr. Terry and Ms. Brown:

This letter constitutes my decision regarding the Complainant's Motion for Summary Judgment filed May 8, 2015. The County responded to the Motion on May 20, 2015. For the reasons set forth below I have determined that the Motion should be **DENIED** for the reasons that follow:

**STANDARD OF REVIEW:**

The PELRB has long followed New Mexico Rules of Civil Procedure, Rule 1-056 when deciding a motion for summary judgment. See *AFSCME Council 18 v. New Mexico Department of Labor*, 01-PELRB-2007 (Oct. 15, 2007). Applying that rule the movant shall set out a concise statement of all material facts about which it is contended there is no genuine dispute. The facts set out shall be numbered and the motion shall refer with particularity to those portions of the record upon which the party relies. See Rule 1-056 NMRA. Summary Judgment will be granted only when there are no issues of material fact with the facts viewed in the light most favorable to the non-moving party. The movant has the burden of producing "such evidence as is sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted." If that threshold burden is met by the Movant, the non-moving party then must "demonstrate the existence of specific evidentiary facts which would require trial on the merits." *Summers v. Ardent Health Serv.* 150 N.M. 123, 257 P.3d 943, (N.M. 2011); *Smith v. Durden*, 2012-NMSC-010, No. 32,594; *Blauwkamp v. Univ. of N.M. Hosp.*, 114 N.M. 228, 231, 836 P.2d 1249, 1252 (Ct. App. 1992).

**MATERIAL FACTS NOT IN DISPUTE:**

1. NMCP SO is a labor organization. (Amended PPC ¶1 and Answer thereto).
2. NMCP SO is the exclusive representative for certain Santa Fe County employees employed by the Santa Fe County Sheriff's Department (hereinafter "the Bargaining Unit"). (Amended PPC ¶2 and Answer thereto).
3. Respondent is a public employer. (Amended PPC ¶3 and Answer thereto).

4. The parties have a CBA in effect, which governs wages, hours, and working conditions for employees within the Bargaining Unit. (Amended PPC ¶4 and Answer thereto).
5. On or about November 4, 2014, the Sheriff's Department posted a "Special Orders" Notice (hereinafter "First Special Orders Notice"), dated November 3, 2014, stating, in part. "Santa Fe County has entered into an agreement with the New Mexico Administrative Office of the Courts to provide a Deputy for security purposes. The Deputy will be posted at the entrance door of Magistrate Court.... The Deputy will be responsible for maintaining presence at the entrance and roving patrols in and around the courthouse." The First Special Orders Notice also sets forth the work hours for the Deputy(ies) assigned and provides that "If no one has signed up at least 48 hours prior to the assignment, I[Sergeant Jose Rodriguez] will have to assign Deputies to fill vacant assignments. Amended PPC ¶5 and Answer thereto; Exhibit 1 to the Amended PPC.
6. The agreement referred to in the First Special Orders Notice is an agreement between the County and the Administrative Office of the Courts ("AOC") entered into on or about September 25, 2014. Amended PPC ¶6 and Answer thereto; Exhibit 2 to the Amended PPC.
7. The County did not provide the Union with prior notice of its agreement with the AOC for Magistrate Court security. Amended PPC ¶7 and Answer thereto.
8. On November 4, 2014, following the posting of the First Special Orders Notice, the Union contacted the County's Human Resources Department regarding the Notice, stating that it memorialized a unilateral change in working conditions, that the Union wanted to bargain the change, including the impacts of any proposed changes, and the Union demanded that the County remove the Special Orders Notice posting. Amended PPC ¶¶7, 8 and 9, and Answers thereto.
9. The First Special Orders Notice was modified to clarify that only on-duty deputies would be assigned to Magistrate Court security and reposted on November 4, 2014. Amended PPC ¶10 and Answer thereto; Answer to ¶8; Exhibits 3 and B.
10. Through e-mail and telephone calls, the County has addressed the concerns of the Union but has declined to bargain with the Union over what it considers to be a retained management rights and denies that there has been a change to the terms and conditions of employment which requires bargaining. Amended PPC ¶16 and Answer thereto.

#### **ISSUE PRESENTED:**

Whether under the uncontested facts of this case the Union is entitled to Judgment in its favor as a matter of law with respect to whether the posting of Notices at issue and the procedure established thereby for assignment of Sheriff's Deputies to Magistrate Court security duties constitutes an unlawful denial of a Union right to bargain a mandatory subject of collective bargaining to impasse unless waived. See NMSA 1978, §§ 10-7E-17(A)(1), 19(F), (G).

#### **RATIONALE:**

As stated, summary judgment is appropriate only if the Motion is "properly supported". The Respondent in this case has the burden of producing such evidence as is sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted. Only if that threshold burden is



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met by the movant is the non-moving party required to "demonstrate the existence of specific evidentiary facts which would require trial on the merits.


Upon review of the pleadings, exhibits and affidavits both in support of and in opposition to Summary Judgment I find that there are unresolved issues of material fact as to whether the posted notices at issue represent "changing posts" as distinguished from "changing shifts"; and, if so, whether "changing posts" is a retained management right within the unambiguous meaning of the parties' CBA. Further factual development is needed to establish whether there are ambiguities in the CBA on this point. If so, an evidentiary hearing is necessary to establish what the past practice of the parties is with regard to the Court Security Division generally and Magistrate Court Security specifically.

#### **CONCLUSION:**

Only if the movant demonstrates by such evidence as is sufficient in law that there are no issues of material fact with the facts viewed in the light most favorable to the non-moving party would it be appropriate to dispose of this case by Summary Judgment. Because there are disputed questions of material fact yet to be determined the Union's Motion for Summary Judgment is **DENIED**. The case shall proceed to a Hearing on the Merits as scheduled.

Sincerely,

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

  
Thomas J. Griego  
Executive Director