STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

AFSCME, LOCAL 3999
Complainant,

-v-

PELRB No: 111-14

CITY OF SANTA FE
Respondent.

DECISION REGARDING DEFERRAL TO ARBITRATION

THIS MATTER comes before the Executive Director, designated as the Hearing Officer in this case, after a Status and Scheduling Conference in which the Director raised *sua sponte* whether the subject matter of the PPC should be deferred to arbitration pursuant to NMAC 11.21.3.22. The Director, being fully advised, finds as follows:

1. The union filed its PPC on May 1, 2014.
2. On May 2, 2014 the Director found that the union's PPC was facially valid and it stated a claim for alleged violations of PEBA §§19(F) or (G).
3. At a status and scheduling conference held Wednesday, May 21, 2014 the parties took opposing views on the question whether this case should be deferred to arbitration pursuant to the grievance procedure set forth in the parties' CBA; the employer favoring deferral and agreeing to waive any procedural impediments to arbitration while the union opposed it on the ground that the PPC raised an issue of good faith bargaining that is not resolved by grievance arbitration and that the employer has manipulated the grievance process so as to increase costs to the union.

DISCUSSION: Deferral is allowed where the subject matter of the PPC requires interpretation of the CBA, the parties waive in writing any objections to timeliness or other procedural impediments to the processing of the grievance-arbitration and the resolution of the contract dispute will likely

resolve the issues raised in the PPC. See *Collyer Insulated Wire*, 192 NLRB 837, 842 (1971) (deferral is appropriate when (a) the dispute arises within the confines of a collective bargaining relationship, (b) the employer has indicated its willingness to resolve the issue through the grievance-arbitration process, and (c) the contract and its meaning lie at the center of the dispute). The parties' CBA contains a grievance procedure culminating in binding arbitration as required by PEBA. Each count of alleged misconduct in this case arises out of a contract violation; in fact, a grievance under the contract grievance procedure was filed with respect to each allegation. Ordinarily whenever the parties clearly and unmistakably agreed to arbitrate an issue, this Board will defer such issue to an arbitrator. However, deferral is not appropriate if the employer has obstructed the grievance-arbitration process; where there has been a "break down" of collective bargaining relationship; or the PPC alleges discrimination, interference with PEBA rights, or violation of another PEBA right that is independent of the contract. See *N.M. Dept. of Health*, PELRB 168-06. See also JOHN E. HIGGINS, THE DEVELOPING LABOR LAW (6th Ed.) at 1599-1602, n. 141-142, and at 1608-1609, n. 181-185, and citations therein.

I find that there is a good faith reason to believe that all three of the above criteria exist in this case. At a minimum the union has alleged a pattern on ongoing contract violations that evidence a breach of the duty to bargain in good faith – an allegation that is properly within the province of this Board, not an arbitrator. While certain of the union's allegations may be properly decided by an arbitrator efficiency considerations militate against deferring some but not all of the allegations.

Finally, I find that the contract language at issue is not ambiguous and therefore does not require an arbitrator's special expertise in contract interpretation. See *AFSCME v. State,* PELRB Case No. 143-07, Hearing Examiner's letter decision on Motion to Defer (Jan. 15, 2008); see also *Caritas Good Samaritan Medical Center*, 340 NLRB 61, 62-63 (2003) (where the terms of the CBA are "clear and ambiguous … the expertise of an arbitrator was not required to interpret the language to establish

whether the Respondent violated the Act"); *Grane Health Care, Inc.*, 337 NLRB 432, 436 (2002) (where the terms of the CBA are "clear and unambiguous," the matter did not "turn on contract interpretation," and "therefore the special interpretation skills of an arbitrator would not be helpful"); and *Struthers Wells Corp.*, 245 NLRB 1170, 1171 n. 4 (1979) (that a claim should not be deferred where the CBA "provision is on its face clear and ambiguous," such that the issue "does not involve contract interpretation").

WHEREFORE, I decline to defer processing of this PPC with regard to its alleged violation of PEBA §19(F) or (G) based upon allegations of failure to bargain in good faith for the reasons stated herein.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

/s/

_____ Dated:_____

Thomas J. Griego
Executive Director