

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

In re:

**NEW MEXICO COALITION
of PUBLIC SAFETY OFFICERS
ON BEHALF OF JOSH DAVID,**

Complainant,

v.

PELRB No. 111-16

SANTA FE COUNTY,

Respondent.

DEFERRAL TO ARBITRATION

THIS MATTER comes before the Executive Director following a Status and Scheduling Conference held June 3, 2016, at which I raised *sua sponte* the question whether this matter is appropriate for deferral to arbitration pursuant to NMAC 11.21.3.22. The Director, being fully advised, finds as follows:

1. The union filed its Prohibited Practice Complaint (PPC) on May 2, 2016 followed by a First Amended Complaint on May 9, 2016, and a Second Amended PPC on May 26, 2016.
2. On May 31, 2016 I found the Second Amended PPC to be facially valid which necessarily required that I find it to have stated a claim for commission of one or more of the acts prohibited under Section 19 of the PEBA. Although Complainant does not expressly state the specific subsection of Section 19 alleged to have been violated, it does contain a heading in bold capital letters stating “**VIOLATION OF THE COLLECTIVE BARGAINING AGREEMENT**”, followed by enumerated paragraphs that allege a violation of NMSA 1978 §10-7E-19(H), prohibiting a public employer’s refusal or failure to comply with a collective bargaining agreement. (CBA).

3. At the June 3, 2016 Status and Scheduling Conference I requested memoranda of points and authority from the parties on the question of whether this complaint may appropriately be deferred to arbitration.
4. I received a Memorandum as requested from the Union on June 10, 2016 in this case¹ but did not receive one from the County; although the County did file a Memorandum in a companion case, *NMCP SO on behalf of Adrienne Ames v. Santa Fe County*, PELRB No. 110-16, on the same deferral issue.
5. The Union correctly points out in its Memorandum that an argument for deferral will be “far less compelling” as a matter of administrative efficiency when the PPC raises both contract claims and other claims that are not appropriate for deferral, citing *Sheet Metal Workers Local 17*, 199 N.L.R.B. 166 (1972). I do not find such “other claims that are not appropriate for deferral” in this case. NMCP SO argues that, in addition to the direct contract violations alleged, other PEBA rights have been violated that are not appropriate for arbitration. However, the only violation plead is that under §19(H) for violation of the CBA. NMCP SO’s Memorandum mentions §19(G), refusal or failure to comply with a provision of the Public Employee Bargaining Act, but in addition to not having plead a violation of §19(G), this Board has previously taken the position that §19(G) of PEBA is directed against claims arising under sections of PEBA other than under §19. See for example, *CWA, Local 7076 v. State of New Mexico*; PELRB No. 122-14. To interpret §19(G) otherwise would result in the finding of repetitive and duplicative liability. There is no reason to believe the New Mexico Legislature intended every violation of a subsection of §19 to result in two separate counts of liability.

¹ It should be noted that the Memorandum submitted did not bear an original signature but is nevertheless accepted by the Director for filing pursuant to a grant of discretionary authority to do by the PELRB at its meeting June 7, 2016. Both Counsel are instructed to submit original signatures on all future pleadings.

6. I find that the resolution of the contractual dispute likely will resolve the issues raised in this PPC.

7. The Employer has not agreed to waive timeliness and the procedural requirements for filing a grievance under the CBA with regard to the allegations of this PPC.

WHEREFORE, pursuant to NMAC 11.21.3.22(A):

A. If the County will agree to waive timeliness and the procedural requirements for filing a grievance under the CBA with regard to the allegations of this PPC, as it has done in the corollary pending case *NMCPSO on behalf of Adrienne Ames v. Santa Fe County*, PELRB No. 110-16, on the same deferral issue, then further processing of this PPC is deferred until the grievance arbitration procedure has been exhausted. If the County does not so agree, I will reconsider deferral upon request of NMCPSO.

B. The parties shall initiate or resume the grievance arbitration procedure and continue with arbitration until an arbitrator's award has been issued or the parties settle the claims herein or for a period of one year, whichever occurs first. In the event that no arbitrator's award has been issued within one year following this deferral, then the director may, after notice and in the absence of good cause shown to the contrary, dismiss the complaint.


C. Upon its receipt of the arbitrator's award, the complaining party shall file a copy of the award with the Director along with notice in writing that it wishes either to proceed with the PPC or to withdraw it. A copy of the award and notice shall also be served upon all other parties.

D. The PELRB reserves jurisdiction to review the arbitrator's award and if, in the opinion of the Director, the issues raised by the PPC were fairly presented to and fairly considered by the arbitrator, and the award is both consistent with the Act and sufficient to remedy any violation found, then the Director shall dismiss the complaint. If the Director

finds that the PPC's issues were not fairly presented to, or were not fairly considered by, the arbitrator or that the award is inconsistent with the Act or that the remedy is inadequate, then the Director shall take such other action as he or she deems appropriate.

Pursuant to NMAC 11.21.3.22 (E) interim decisions of the Director, including the initial decision to defer or not to defer further processing of a complaint pending arbitration, shall not be appealable to the Board.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD



Thomas J. Griego
Executive Director

Date: 6-14-16