LABOR-MANAGEMENT RELATIONS BOARD
Thursday, July 27, 2017
600 2nd Street NW, 7th Floor, Albuquerque, NM 87102
HEARING ROOM 1

MEMBERS PRESENT:	*OTHERS PRESENT:*	
Chairman Ted Baca	*Eric Locher*	*Michael Dorin*
Juan Montoya	*Kellie Garcia*	*Rocky Gutierrez*
Michael Wartell	*Philemina Hausler*	*James Montalbano*
	Ian Stoker	*Stephen Curtice*
	Nick Nunez	*Jason Burnette*
	Javier Gonzlaes	*Patty French*
	Bobby Griego	

Minutes

I. CALL TO ORDER.

Chairman Ted Baca called the meeting to order at 9:00 a.m. Board members Juan Montoya and Michael Wartell were also present.

II. REVIEW AND APPROVAL OF AGENDA FOR THURSDAY, JULY 27, 2017.

Chairman Baca made changes to agenda item VIII. LB 15-28 was corrected from City's Motion for Summary Judgment to City's Motion to Dismiss. LB 17-06 changed to City's Amended Motion to Dismiss and Response to City's Amended Motion to Dismiss. Mr. Wartell moved to approve the agenda with the changes. Mr. Montoya seconded. Vote taken and passed 3-0.

III. REVIEW AND APPROVAL OF LABOR BOARD MINUTES FOR JULY 13, 2017.

Mr. Montoya moved to approve the minutes for July 13, 2017. Mr. Wartell seconded. Vote taken and passed 3-0.

IV. PUBLIC COMMENTS *Limited to three (3) minutes total time per person.

Chairman Baca discussed the Notices of Unavailability for several cases submitted by Assistant City Attorney Melissa Kountz. He suggested that the parties discuss old cases to move forward with prior to November. Kelly Garcia, Assistant City Attorney appeared on behalf of the city and stated that the Union has been advised to contact the city if there are any urgent matters to be discussed or heard, and the city will assign another attorney to work on the case. She also stated that there are several other old cases not listed on the notices that could be worked on in the meantime.

V. RECEIPT, APPROVAL AND SIGNING OF STIPULATED DISMISSALS AND SETTLEMENTS.

None.

VI. PRESENTMENT OF ORDERS.

The following Orders were approved and signed by the Board members: LB 15-09, Order Denying the City's Motion for Summary Judgment; LB 15-18, Order of Dismissal; LB 16-17, Order Granting the City's Motion to Dismiss of in the Alternative for Summary Judgment; LB 17-06 Order Vacating Hearing and Granting Respondent's Leave to Amend Motion to Dismiss; LB 17-24 Order Staying Proceedings.

VII. CITY'S MOTION TO DISMISS PROHIBITED PRACTICE COMPLAINT'S FOR FAILURE TO COMPLY WITH APRIL 25, 2017 ORDER IN THE FOLLOWING CASES: LB 09-13; LB 11-01; LB 11-02; LB 11-03; LB 11-04; LB 12-19; LB 15-10; LB 15-22; LB 17-04; LB 17-07 AND LB 17-09.

Philemina Hausler, Assistant City Attorney appeared on behalf of the City and stated that the City filed this Motion to Dismiss because the Union was ordered by the Board to file Responses by June 9, 2017 and have not done so. James Montalbano, Attorney for AFSCME appeared and stated asked the Board for thirty days to allow the union to submit Responses for these cases. The city did not oppose the union's request.

There was a brief discussion by the Board members on creating a Thirty Day Administrative Order for filing Responses to Motions. The Board also discussed scheduling of meetings for August and September. The meeting for August 8, 2017 was rescheduled to August 7, 2017 and following meetings will be September 5, 2017 and September 15, 2017.

This matter will be scheduled for motions hearing on September 5, 2017.

VIII. MOTIONS HEARING:

- **RESCHEDULED- LB 12-20, CITY'S MOTION TO DISMISS OR IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT AND AFSCME'S RESPONSE TO THE CITY'S MOTION TO DISMISS OR IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT. (AFSCME 2962)**

  Kellie Garcia, Assistant City Attorney appeared on behalf of the City and presented the City's Motion to Dismiss or in the Alternative for a More Definite Statement. She stated that the complaint was filed on behalf of a C28 classified transit employee for allegedly being forced to work out of her classification and was performing M14 duties. The grievant alleged that she performed the duties for three years and did not receive an upgrade pay for that classification. Ms. Garcia argued that the Union failed to specify in their complaint the specific duties and exact time frame that the employee allegedly performed duties outside of her classification. She stated that if the Board denied the City's Motion to Dismiss then the City is entitled to a more definite statement of alleged duties performed and restitution of time.

  Stephen Curtice, Attorney appeared on behalf of AFSCME and argued that the complaint filed does identify the grievant's classification and the duties she performed outside of her classification for up to three years.

  Mr. Montoya made a Motion that the Board go into closed executive session pursuant to Section 10.15.1.H.3 of the Open Meetings Act which allows for the closing of meetings for deliberation by a public body in connection with an administrative adjudicatory proceeding. Mr. Wartell seconded. A roll call vote was taken and passed 3-0.

  Mr. Wartell made a Motion to return to open session. The meeting had been in closed session pursuant to Section 10.15.1.H.3 of the Open Meetings Act. Mr. Montoya seconded. A roll call vote was taken and passed 3-0.

The Board was in closed session to discuss LB 12-20 and no other cases were discussed.

Mr. Montoya moved to deny the City's Motion to Dismiss and grant the City's Motion for More Definite Statement. Chairman Baca seconded. Vote taken and passed 3-0.

- **LB 14-11 consolidated with LB 12-34 and LB 13-14, PETITIONER'S MOTION FOR ORDER TO SHOW CAUSE WHY A FULL ACCOUNTING OF MAKE-WHOLE REMEDY HAS NOT BEEN CARRIED OUT BY RESPONDENT AND CITY'S RESPONSE TO MOTION FOR ORDER TO SHOW CAUSE. (AFSCME 1888)**
  James Montalbano, Attorney appeared on behalf of AFSCME and presented a brief argument and stated that the Union is seeking clarification as to the Boards ruling back from November 1, 2013. He stated that the Board ruled that employees affected by the furlough days needed to be made whole and asked the Board to determine what employees need to get paid back. He stated that the City has reimbursed current city employees but has not reimbursed former city employees that were also affected by the furlough days and were included in the bargaining unit.

  Kellie Garcia, Assistant City Attorney appeared on behalf of the City and stated that current J series employees that were affected by the furlough days have been compensated. She asked the Board to provide guidance and clarification of the Board's Order regarding reimbursement to former employees. She stated that the City is willing to compensate them and does not dispute the reimbursement.

  Juan Montoya made a motion that former employees be included in the reimbursement for furlough days. Chairman Baca seconded. Vote taken and passed 3-0.

- **RESCHEDULED- LB 14-20, CITY'S MOTION TO DISMISS AND AFSCME 2962'S RESPONSE TO CITY'S MOTION TO DIMISS.**
  Kellie Garcia, Assistant City Attorney appeared on behalf of the City. Stephen Curtice, Attorney appeared on behalf of AFSCME. Ms. Garcia stated that the City's Motion to Dismiss was scheduled and argued at a previous Board meeting but there was never an Order submitted or signed by the Board. Mr. Curtice stated that the Union will prepare an Order to show that the City's Motion to Dismiss was denied.

  This matter will be placed on the Labor Board meeting agenda for August 7, 2017 for scheduling of a merits hearing.

- **LB 15-27, CITY'S MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT AND AFSCME'S RESPONSE TO CITY'S MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT. (ASCME 624, 1888, 2962 and 3022)**
  Kellie Garcia, Assistant City Attorney appeared on behalf of the City and stated that the City filed a Motion to Dismiss because the Union failed to follow the thirty day time line for filing a complaint per the Labor Management Relations Ordinance. She stated that the Union alleges the City committed a prohibited practice when changing a portion of the substance abuse policy. She argued that the City properly notified the Union and followed the ordinance for publishing the changes.

Rocky Gutierrez appeared on behalf of AFSCME. He argued that the ordinance states that parties must negotiate which he requested negotiation and was never notified to meet for negotiation. He stated that he was notified by employees when the notice was circulating for signature for the changes of the policy. He then filed the complaint on August 27th which was within the thirty days from when employees signed the changes.

Mr. Montoya made a Motion that the Board go into closed executive session pursuant to Section 10.15.1.H.3 of the Open Meetings Act which allows for the closing of meetings for deliberation by a public body in connection with an administrative adjudicatory proceeding. Mr. Wartell seconded. A roll call vote was taken and passed 3-0.

Chairman Baca made a Motion to return to open session. The meeting had been in closed session pursuant to Section 10.15.1.H.3 of the Open Meetings Act. Mr. Montoya seconded. A roll call vote was taken and passed 3-0. The Board was in closed session to discuss LB 15-27 and no other cases were discussed.

Mr. Montoya moved to deny the City's Motion to Dismiss. Mr. Wartell seconded. Vote taken and passed 3-0.

- **LB 15-28 CITY'S MOTION FOR SUMMARY JUDGMENT AND AFSCME'S RESPONSE TO CITY'S MOTION FOR SUMMARY JUDGMENT. (AFSMCE 624)**
  This matter was rescheduled for September 5, 2018.

- **LB 15-32, AFSCME'S MOTION TO REQUEST A STAY OF PROCEEDINGS AND A STAY FOR RESPONSE TO CITY'S MOTION FOR SUMMARY JUDGMENT. (AFSCME 624)**
  Rocky Gutierrez appeared on behalf of AFSCME. Kellie Garcia, Assistant City Attorney appeared on behalf of the City. The parties agreed to the Motion to Stay Proceedings. They asked the Board to stay the proceedings until the Board's ruling in LB 12-02 is complete because this case is similar to LB 12-02.

  Mr. Wartell moved to grant the Motion to Stay Proceedings. Mr. Montoya seconded. Vote taken and passed 3-0.

- **RESCHEDULED- LB 17-06, CITY'S MOTION TO DISMISS FOR LACK OF JURISDICTION AND AFSCME 3022'S RESPONSE TO CITY'S MOTION TO DISMISS.**
  Ian Stoker, Assistant City Attorney appeared on behalf of the City and presented the City's Amended Motion to Dismiss. He argued that the collective bargaining agreement states that if there is a case to arbitrate then that should be honored for arbitration and he asked the Board to honor and uphold the agreement to arbitrate and dismiss this case.

  James Montalbano, Attorney appeared on behalf of AFSCME and presented the Union's Response to the City's Amended Motion to Dismiss. He argued that unless the Union waive there rights, they are allowed to bring this matter to the Labor Board. He stated that filing this complaint with the Board is the only grievance procedure available to bargaining unit employees. He asked the Board to deny the City's Motion to Dismiss and proceed with a hearing.

Mr. Wartell made a Motion that the Board go into closed executive session pursuant to Section 10.15.1.H.3 of the Open Meetings Act which allows for the closing of meetings for deliberation by a public body in connection with an administrative adjudicatory proceeding. Mr. Montoya seconded. A roll call vote was taken and passed 3-0.

Mr. Wartell made a Motion to return to open session. The meeting had been in closed session pursuant to Section 10.15.1.H.3 of the Open Meetings Act. Mr. Montoya seconded. A roll call vote was taken and passed 3-0. The Board was in closed session to discuss LB 17-06 and no other cases were discussed.

Mr. Montoya moved to deny the City's Motion to Dismiss and find that there was a dual track for filing of complaints in reference to violations of written agreements of prohibited practice complaints or arbitration through grievance procedures. Mr. Wartell seconded. The Board members voted unanimously to deny the City's Motion to dismiss.

Mr. Stoker asked the Board to submit a written Order of Findings of Facts and Conclusions of Law regarding the City's argument and the Boards findings.

IX. ADJOURNMENT.

Mr. Montoya moved to adjourn the meeting. Mr. Wartell seconded. Vote taken and passed 3-0. Meeting was adjourned at 12:05 p.m.

APPROVED:

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TED BACA, CHAIR **DATE**
City Labor Management Relations Board

cc: Richard J. Berry, Mayor
Natalie Howard, City Clerk