

# CITY OF ALBUQUERQUE



## LABOR-MANAGEMENT RELATIONS BOARD

*Monday, May 18, 2015*

600 2<sup>nd</sup> Street NW, 7<sup>th</sup> Floor, Albuquerque, NM 87102

HEARING ROOM 1

MEMBERS PRESENT:

*Patrick Halter  
Susan Chappell  
Juan Montoya*

OTHERS PRESENT:

<i>Nick Bullock</i>	<i>Rocky Gutierrez</i>
<i>Kathryn Levy</i>	<i>James D'Amato</i>
<i>Kellie Garcia</i>	<i>Mary Scott</i>
<i>Melissa Kountz</i>	<i>James Montalbano</i>
<i>Victor Lovato</i>	<i>Tomas Romero</i>
<i>Mark Shepard</i>	<i>Anthony Chavez</i>
<i>Rebecca Martinez</i>	<i>Michael Dorin</i>
<i>Brittany Lopez</i>	<i>Jessica Enriquez</i>

PO Box 1293

### MINUTES

Albuquerque

**I. CALL TO ORDER.**

Chairman Patrick Halter called the meeting to order at 9:03 a.m. All members were present.

**II. REVIEW AND APPROVAL OF AGENDA FOR MONDAY, MAY 18, 2015.**

New Mexico 87103

Chairman Patrick Halter made a motion to approve the agenda. Juan Montoya seconded. Motion passed 3-0.

**III. REVIEW AND APPROVAL OF LABOR BOARD MINUTES FOR MAY 4, 2015.**

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Chairman Halter made a motion to approve the minutes for May 4, 2015. Susan Chappell seconded. Motion passed 3-0.

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

No public comments.

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

Kellie Garcia, Assistant City Attorney appeared on behalf of the city for LB 12-08. No one was present for NMTU. An Order of Dismissal was entered by the city and Ms. Garcia stated that the Board voted to dismiss this matter back in March. Chairman Halter made a motion to approve the Order of Dismissal in LB 12-08. Mr. Montoya seconded. Motion passed 3-0.

**VI. LB 13-11, REVIEW OF THE NOTICE OF PRESENTMENT OF SETTLEMENT AGREEMENT. ( Fred Mowrer, APOA)**

Kathryn Levy, Assistant City Attorney appeared on behalf of the city and stated that not all signatures have been received on the agreement. She requested to reset this matter for the next meeting.

This matter is reset for June 1, 2015.

**VII. SCHEDULING OF CASES:**

- **LB 12-26, REVIEW OF PETITIONER'S CERTIFICATE OF READINESS AND REQUEST FOR HEARING. ( JOHN D'AMATO, APOA)**

John D'Amato appeared on behalf of APOA. Kathryn Levy, Assistant City Attorney appeared on behalf of the city. After a brief discussion and agreement on scheduling dates, the parties and the Board agreed to schedule a merits hearing on this matter for July 27, 2015.

**VIII. MOTIONS, RESPONSES AND ORDERS:**

- **LB 12-08, ORDER OF DISMISSAL. (PAUL LIVINGSTON on behalf of NMTU)**  
See item V.

- **LB 15-03, ORDER OF DISMISSAL. (ROBERT GUTIERREZ OR PAUL LIVINGSTON on behalf of NMTU and SHANE YOUTZ, AFSCME)**

Kellie Garcia, Assistant City Attorney appeared on behalf of the city. No one was present for NMTU. Ms. Garcia stated that the Board previously voted to dismiss this matter on March 16, 2015 and the city entered an Order of Dismissal. Chairman Halter made a motion to dismiss LB 15-03. Mr. Montoya seconded. Motion passed 3-0.

- **LB 15-09, CITY'S MOTION TO DISMISS. ( THOMAS ROMERO, AFSCME)**

Kellie Garcia, Assistant City Attorney appeared on behalf of the city. Rocky Gutierrez appeared on behalf of AFSCME. Ms. Garcia stated that the city withdraws the Motion to Dismiss and submitted a Motion for Summary Judgment and requested to schedule the Motion for Summary Judgment to a future hearing date.

The Motion for Summary Judgment will be scheduled for June 15, 2015.

- **LB 15-04, CITY'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT. (MICHAEL DORIN, AFSCME)**

Melissa Kountz, Assistant City Attorney appeared on behalf of the city and stated that this case is a promotional case involving Ms. Thompson who is a member of the clerical union who applied for an M series position. The position was offered to an outside applicant who accepted. She stated that this matter should be dismissed on two grounds. First the clerical union contract cannot control the selection of the M series position and no mention in collective bargaining agreement states that clerical member should be selected over members of the same bargaining unit. Second reason is that facts are almost identical to those in LB 12-26 and this matter should be dismissed.

Michael Dorin appeared on behalf of AFSCME and stated that the city's argument is negated because they picked an outside candidate in terms of 20.1.1 of the contract. He stated that in LB 12-26 there was an incorrect definition by the Labor Board in terms of first consideration as opposed to legal consideration.

Chairman Halter requested that the parties submit written orders by June 15, 2015.

- **LB 15-08, CITY'S MOTION TO DISMISS PPC. (ROBERT GUTIERREZ on behalf of NMTU and SHANE YOUTZ, AFSCME)**

Melissa Kountz, Assistant City Attorney appeared on behalf of the city and stated that this complaint should be dismissed because NMTU is not the correct party of interest and not the exclusive representative of employees and have no standing to make arguments. She stated that any arguments made regarding Ron Gonzales have been made in a personnel board matter that is still pending. The city request to dismiss this matter.

James Montalbano appeared on behalf of AFSCME and stated that the union does not oppose the city's request to dismiss.

Chairman Halter made a motion to grant the city's Motion to Dismiss LB 15-08. Mr. Montoya seconded. Motion passed 3-0.

- **LB 15-06, CITY'S MOTION FOR MORE DEFINITE STATEMENT AND MOTION TO STAY TIME LIMITS FOR DISPOSITIVE MOTIONS. ( TOMAS ROMERO, AFSCME)**

Kellie Garcia, Assistant City Attorney appeared on behalf of the city and stated that this prohibited practice complaint was filed on behalf of Josh Delgado, animal welfare employee who was given a 90 day suspension, 30 days' work days without pay and 60 workdays with pay. The union alleges violations of the collective bargaining agreement (CBA) sections 24.2.4 and 24.2.6 and the labor management relations ordinance (LMRO) section 3-2-9. The city filed Motion for More Definite Statement requesting which parts of CBA and LMRO the city was alleged of violating. She stated that Tomas Romero sent an email to paralegal Denise Enriquez stating he would review the Motion with Mr. Gutierrez and give more details. The city has not received a more definite statement and the city requested an enlargement of time to file dispositive motions after receiving the unions more definite statement.

Rocky Gutierrez appeared on behalf of AFSCME and stated that this case is a Step III grievance and issue of the case is form of discipline. He stated that the City carries the burden of proof to establish just cause. He objected to the city's request for dispositive motions and asked the Board to deny the city's motion for more definite statement and schedule matter for a hearing.

Ms. Garcia stated that Tomas Romero consented to the city's Motion for More Definite Statement when he said yes he would go over and provide more details of complaint.

Chairman Halter made a motion to deny the City's Motion for More Definite Statement and Motion to Stay Time. Mr. Montoya seconded. Motion passed 3-0.

Matter will be scheduled for merits hearings on August 10, 2015.

- **LB 14-20, AMENDED ANSWER TO PROHIBITED PRACTICE COMPLAINT, POSITION STATEMENT, and MOTION FOR DISMISSAL AND AFSCME'S AMENDED STEP III GRIEVANCE. ( ROCKY GUTIERREZ, AFSCME)**

Kellie Garcia, Assistant City Attorney appeared on behalf of the City. Rocky Gutierrez appeared on behalf of AFSCME. Ms. Garcia stated that Mr. Gutierrez was ordered to amend his complaint and did so. She stated that a merits hearing was scheduled for March 16, 2015 and was vacated but never reset. She requests to set matter of merits hearing.

Mr. Gutierrez stated that the City's argument on the City's Motion to Dismiss was exhausted and the parties agreed that the union would amend the complaint. He stated that he thought the matter was resolved and the City requesting time to submit their answer would be untimely.

Chairman Halter made a motion to set this matter for a hearing on August 24, 2015. Mr. Montoya seconded. Motion passed 3-0.

#### **IX. MERITS HEARING:**

- **LB 14-11 consolidated with LB 12-32 and LB 13-14, AFSCME LOCAL 1888 v. CITY OF ALBUQUERQUE, DEPARTMENT OF MUNICIPAL DEVELOPMENT. ( JAMES YOUTZ on behalf of AFSCME)**

James Montalbano with Youtz and Valdez appeared on behalf of AFSCME and with him appeared AFSCME representative Rocky Gutierrez. Mr. Montalbano stated that City violated the collective bargaining agreement (CBA) and the labor management relations ordinance (LMRO) by imposing furlough days and forcing employees to take two furlough days off a year even after economic budget crisis. He stated that the Mayor gave a 1% raise to city employees in 2012 and 2013 and a 3% raise in 2014 but the local 1888 members did not get the raise and instead were forced to give furlough days.

He asked the Board to find that the city is in breach of the CBA and the LMRO for failing to bargain in good faith and order the city to reimburse lost wages to all employees of local 1888. The parties stipulated to all of the unions exhibits 1-26 except exhibit 3 and 5.

The union's witnesses that appeared to testify were Tomas Romero, City Security Officer with department of municipal development, Anthony Chavez, Transit Security Officer with ABQ ride, Rebecca Macias, Animal Control Officer with animal welfare department and Rocky Gutierrez, AFSCME representative.

Kellie Garcia and Melissa Kountz, Assistant City Attorney's appeared on behalf of the city and with them appeared city representative and Human Resource Director Mary Scott. Ms. Garcia stated that the city has complied with section 2.5 of the collective bargaining agreement and when the city council implemented a decrease in pay the city and the union negotiated furlough days for 1888 members in lieu of pay decrease. She stated that transit and department of municipal development abided by 2.5 of the CBA and asked the Board to deny the grievance and deny request for reimbursement of furlough days off. The parties stipulated to all of the city's exhibits 1-15 except for exhibit 2 and 5. The city's witnesses that appeared to testify were John Baker, former Security Lieutenant for Transit, Mary Scott, Human Resources Director, Mark Shepard, Security and Parking Division Manager and Renee Carriaga, Superintendent for department of municipal development.

The Board ordered written closing statements and proposed order of findings from the parties due by June 18, 2015. Once parties have submitted statements this item will be placed on an agenda after June 18<sup>th</sup>.

**X. ADJOURNMENT.**

Chairman Halter made a motion to adjourn. Mr. Montoya seconded. Motion passed 3-0 and the meeting was adjourned at 3:47 p.m.

**APPROVED:**

  
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**PATRICK HALTER, CHAIR**  
**City Labor Board**

June 1, 2015  
**DATE**

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