



LABOR-MANAGEMENT RELATIONS BOARD

Monday, July 27, 2015

600 2nd Street NW, 7th Floor, Albuquerque, NM 87102

HEARING ROOM 1

MEMBERS PRESENT:

*Patrick Halter
Susan Chappell
Juan Montoya*

OTHERS PRESENT:

*Nick Bullock Victor Lovato
Samantha Hults Ben Guevera
Melissa Kountz James Montalbano
Kellie Garcia Fred Mowrer
Irma Gonzalez Rocky Gutierrez
Brittany Lopez Kim Ritchey
Jessica Enriquez Dolores Lovato*

PO Box 1293

MINUTES

Albuquerque

I. CALL TO ORDER.

Chairman Patrick Halter called the meeting to order at 9:00 a.m. All members were present.

New Mexico 87103

II. REVIEW AND APPROVAL OF AGENDA FOR MONDAY, JULY 27, 2015.

Chairman Halter made a motion to approve the agenda. Susan Chappell seconded. Motion passed 3-0.

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III. REVIEW AND APPROVAL OF LABOR BOARD MINUTES FOR JULY 13, 2015.

Chairman Halter made a motion to approve the minutes for July 13, 2015. Juan Montoya seconded. Motion passed 3-0.

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

Fred Mowrer appeared on behalf of APOA and asked the Board if he can enter an order for LB 13-11. Chairman Halter stated that the Order will be placed on the agenda for August 10, 2015.

V. LB 15-04, AFSCME'S RESPONSE TO CITY'S MOTION FOR SUMMARY JUDGMENT. (Michael Dorin, AFSCME)

Melissa Kountz, Assistant City Attorney appeared on behalf of the city. Michael Dorin appeared on behalf of AFSCME. Ms. Kountz stated that this matter is premised on similarities of LB 11-26 which the Board has already decided and signed an Order. The Union's Response is almost identical to the Brief in LB 11-26 and because of the similarities matter should be dismissed for same reasons.

Mr. Dorin stated that AFSCME has not received a written decision on consideration and asked for a written decision.

Chairman Halter made a motion that the Board go into closed session to discuss LB 15-04 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 as well as another provision from the Open Meetings Act with respect to the threat of litigation as a basis for closed session. Mr. Montoya seconded. A roll call vote was taken and the motion passed 3-0.

Chairman Halter 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. He stated the Board was in closed session to discuss LB 15-04. Ms. Chappell seconded. Motion passed 3-0.

Ms. Chappell made a motion to grant the city's Motion for Summary Judgment. Chairman Halter seconded. Motion passed 3-0

Mr. Dorin and the Board members signed an Order of Dismissal for LB 15-04.

VI. CONSOLIDATED MATTERS LB 14-11, LB 12-32 AND LB 13-12:

- **AFSCME'S POST HEARING BRIEF AND FINDINGS OF FACTS AND CONCLUSIONS OF LAW AND THE. (James Montalbano, AFSCME)**
- **CITY'S CLOSING ARGUMENT AND BRIEF IN SUPPORT THEREOF IN THE MATTERS CONSOLIDATED LB 14-11, LB 12-32 AND LB 13-12.**
Kellie Garcia, Assistant City Attorney appeared on behalf of the city. James Monalbano appeared on behalf of Youtz and Valdez and on behalf of AFSCME.

Chairman Halter made a motion that the Board go into closed 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 as well as another provision from the Open Meetings Act with respect to the threat of litigation as a basis for closed session. Mr. Montoya seconded. A roll call vote was taken and the motion passed 3-0.

Chairman Halter 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 the motion passed 3-0.

Chairman Halter stated that the Board was not ready to make a decision on this matter and rescheduled it for August 10, 2015.

VII. MOTIONS AND ORDERS:

- **LB 15-13, CITY'S MOTION TO DISMISS OR ALTERNATIVELY SUMMARY JUDGMENT. (Rocky Gutierrez, AFSCME)**
Samantha Hults, Assistant City Attorney appeared on behalf of the city and stated that there is a thirty day time limit to file a prohibited practice complaint and all matters complained of have occurred way before that time limit so there is grounds for dismissal. She stated that there isn't a case in controversy because all complaints are that employee's received letters of instructions and those letters are not discipline. One case is regarding a union representative that requested for union time when contract says they are supposed to give five days' notice unless there is an emergency. The employee was given a letter of instruction advising them to follow the contract and put in time which is under the city rules and regulations. The other

letters of instruction deals with an incident where there was theft and the employee instead of reporting to their supervisor they went to their union representative Casey Padilla. Letter of instruction stated that they are to report incident to their supervisor and participate in any investigation and the employee did not want to give the city information on what he saw and what occurred. The city asked to grant summary judgment since there was no discipline.

Rocky Gutierrez appeared on behalf of AFSCME and stated that regarding the time limit issue the employees were issued letters of investigation on May 8, May 9 and May 11 which triggered the time limits. The prohibited practice complaint was filed within the thirty days, on June 8, 2015. According to the collective bargaining agreement union time can be authorized and there are provisions for waiving the time limit. Union time does have to be requested in five days but Mr. Turrieta was approved union time and was allowed to go. The city then issued him a letter of investigation and letter of instruction and the union believes that interferes with the union ability to make a request. Mr. Torres did see theft and as steward he notified member of executive board but the responsibility of the union is to be the liaison between city and employee. Employees have rights to go to the union with any issues or concerns and there is nothing in the collective bargaining agreement stating they have to go to management. Union believes it is retaliation and asks to schedule a hearing.

Chairman Halter made a motion to deny the City's Motion for Summary Judgment and schedule matter for a hearing. Mr. Montoya seconded. Ms. Chappell opposed. Motion passed 2-1.

- **LB 15-14, STIPULATED ORDER FOR WITHDRAWAL. (Fred Mowrer, APOA)**

Fred Mowrer appeared on behalf of APOA and stated that this matter has been resolved and the parties submitted a Stipulated Order of Withdrawal. Chairman Halter made a motion to approve the Order. Ms. Chappell seconded. Motion passed 3-0.

VIII. NEW BUSINESS:

- **LB 15-15, PROHIBITED PRACTICE COMPLAINT FILED BY ALBUQUERQUE POLICE OFFICER'S ASSOCIATION AGAINST THE CITY OF ALBUQUERQUE AND ALBUQUERQUE POLICE DEPARTMENT FOR REFUSING TO HONOR THE TERMS OF THE COLLECTIVE BARGAINING AGREEMENT AND PAST PRACTICE OF THE BIDDING PROCESS FOR SERGEANTS. (Fred Mowrer, APOA)**

Fred Mowrer appeared on behalf of APOA. Kellie Garcia, Assistant City Attorney appeared on behalf of the city. Mr. Mowrer stated that he will be filing an amendment to the complaint to add another officer who was skipped in promotion. There will be two incidents of officers that should have been promoted and they are ready to have matter set for hearing.

This matter will be scheduled for a future date.

- **LB 15-16, PROHIBITED PRACTICE COMPLAINT FILED BY AFSCME LOCAL 2962 ON BEHALF OF THE EMPLOYEES OF THE CITY OF ALBUQUERQUE SOLID WASTE DEPARTMENT AGAINST THE CITY OF ALBUQUERQUE AND CITY'S SOLID WASTE DEPARTMENT FOR VIOLATION OF THE AGREEMENT BETWEEN THE CITY AND THE TECHNICAL AND CLERICAL EMPLOYEES. (Michael Dorin, AFSCME)**

Michael Dorin appeared on behalf of AFSCME and stated that this case relates to solid waste employees not being paid for paid breaks and asks to move for scheduling.

Kellie Garcia, Assistant City Attorney appeared on behalf of the city and stated that the city is going to submit an Amended Answer and Position Statement and Motion of Dismissal in this case and asks to hear this before scheduling hearing. City will have that filed within a week.

IX. MERITS HEARING:

• **LB 12-26, PROHIBITED PRACTICE COMPLAINT AGAINST THE CITY OF ALBUQUERQUE'S POLICE DEPARTMENT FOR VIOLATION OF CONTRACTUAL OBLIGATIONS. (Fred Mowrer, APOA)**

Melissa Kountz, Assistant City Attorney appeared on behalf of the city. No one was present for APOA. The parties submitted an Unopposed Motion to Reset. Chairman Halter made a motion to approve the Stipulated Motion to Vacate. Ms. Chappell seconded. Motion passed 3-0.

• **LB 12-24, PROHIBITED PRACTICE COMPLAINT ON BEHALF OF DOLORES LOVATO AGAINST THE CITY OF ALBUQUERQUE TRANSIT DEPARTMENT FOR VIOLATION OF DUE PROCESS. (Casey Padilla or Rocky Gutierrez, AFSCME)**

Kellie Garcia, Assistant City Attorney appeared on behalf of the city and with her appeared city representative Victor Lovato. Kim Ritchey appeared on behalf of AFSCME. Ms. Richie stipulated to the city's exhibits. Ms. Garcia stated that this prohibited practice complaint stems from a collective bargaining agreement that was in affect with local 624 transit and the city. Dolores Lovato grievant received a thirty day unpaid suspension as a sun van driver with abq transit department. She was suspended after causing an accident while driving city sun van. The sun van Ms. Lovato was on duty December 7, 2011 and surveillance from the sun van was reviewed by the predetermination hearing officer David Lovato and saw Ms. Lovato was driving in distracted and inattentive manner. Ms. Lovato reads text message and send messages and reached for food bag removing both hands from wheel. Ms. Lovato ran a red light at intersection of Fourth Street and I-40 frontage road. She collided with a white van making a left turn and that van was discovered to also be a city vehicle driven by city employee. Ms. Lovato received a notice of investigation on the same day of accident and the next week on December 13th the accident and injury review committee found that the accident could have been preventable. Risk Management was asked to also review the case and on January 17, 2012 risk management determined the accident was severe and investigation concluded. Ms. Lovato was given notice of predetermination hearing on March 30 2012 and the hearing was held on April 5, 2012. On July 26, 2012 Ms. Lovato received her thirty day unpaid suspension. The Union argues that investigation exceeded the forty-five days but investigation was concluded after review of risk management and the accident and injury review committee. Ms. Lovato had a significant disciplinary history prior to accident to include letter of instruction, letter of reprimand and ten day suspension for previous preventable accident. Under the terms of the collective bargaining agreement that was at that time in affect, the city had just cause to discipline and complied with the contract. City asks to deny grievance and uphold suspension.

Ms. Ritchey stated that the letter was not given within the forty five days it was given in one hundred and twenty days before anything was given to Lovato about incident. She was removed from her route for three months so they feel that was

already discipline. From December to April is a long time for a hearing. On July 17 she was given predetermination results which were one hundred and twenty days later. She was given a thirty day suspension and she worked four days a week not five days a week and her suspension went from July 30 to September 9 which is over thirty days. It was a hard ship for her and her family. Nothing was given to Dolores stating her investigation was closed.

The city called Dolores Lovato to testify.

Ms. Ritchey stated that the union filed the complaint on the forty five days not on the discipline. The city is proceeding on discipline not the forty five days.

Ms. Garcia stated that the prohibited practice complaint listed just cause provisions of the contract.

The parties requested a recess to discuss this issue. The parties stated that they have settled this case. Ms. Lovato's discipline will be readjusted based on her hours rather than days worked. The parties will submit a closing document.

X. ADJOURNMENT.

Chairman Halter made a motion to adjourn. Ms. Chappell seconded. Motion passed 3-0 and the meeting was adjourned at 11:35 a.m.

APPROVED:



PATRICK HALTER, CHAIR
City Labor Board

8.10.2015
DATE

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