



# ***CITY OF ALBUQUERQUE***

## **CITY LABOR-MANAGEMENT RELATIONS BOARD**

### **MONDAY, DECEMBER 4, 2023**

#### **MEMBERS PRESENT:**

*Chairman Ted Baca  
Juan Montoya  
Bruce Perlman*

#### **OTHERS PRESENT:**

*Nichole Maher  
Earl Garcia  
James Montalbano  
Emily Cuellor  
Leigh Brunner  
Louis Sisneros*

*Jessica Serrano  
Louis Montoya  
Ian Stoker  
Joel Villarreal  
Merissa Reddy*

### **MINUTES**

#### **I. CALL TO ORDER.**

Chairman Baca called the meeting to order at 9:00 am.

#### **II. REVIEW AND APPROVAL OF AGENDA FOR MONDAY, DECEMBER 4, 2023.**

Mr. Perlman moved to approve the agenda. Mr. Montoya seconded. Chairman Baca said to strike item III from the agenda. Voted and passed 3-0. Agenda approved.

#### **III. REVIEW AND APPROVAL OF MINUTES.**

Minutes were not reviewed or signed at this meeting.

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

None at this time.

#### **V. MERITS HEARING:**

- **LB 20-09 MERITS HEARING ON THE ISSUE OF BACKPAY FOR PROHIBITED PRACTICE COMPLAINT FILED BY AFSCME LOCAL 624 ON BEHALF OF EARL GARCIA AGAINST THE CITY OF ALBUQUERQUE DEPARTMENT OF MUNICIPAL DEVELOPMENT FOR VIOLATIONS OF THE LMRO 3-2-9(A)(6), CBA 0.1.1 AND 24.1.5 JUST CAUSE.**

Attorney Ian Stoker and Assistant Attorney Jessica Serrano appeared on behalf of the City. Attorney Montalbano appeared on behalf of AFSCME Local 624.

Preliminary matter: The matter of burden of proof was discussed. Chairman Baca stated Mr. Garcia was suing for backpay, therefore the Union should have the burden of proof. Chairman Baca asked how different the Union and City's backpay totals were. Attorney Stoker said approximately 25% different. Attorney Montalbano raised the issue of the Board telling the City to file a motion to enforce the prior agreement, but they did not file one, and that enforcement should not be allowed to be shown at this hearing.

Chairman Baca made a motion 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. Mr. Montoya seconded. A roll call vote was taken and the motion passed 3-0. Session was closed at approximately 9:10 a.m.

The Board returned to open session at approximately 9:22 a.m. The meeting had been in closed session pursuant to Section 10.15.1.H.3 of the Open Meetings Act. Chairman Baca stated the Board was in closed session to discuss and deliberate on LB 20-09 and no other matters were discussed.

The Board stated the City had been given an order to file a motion, which they did not do, therefore, the Board would not take it into consideration at this hearing. Chairman Baca stated we would move on to the merits hearing now.

Attorney Montalbano made his opening statement and discussed what the Union felt Mr. Garcia was owed in salary, leave, retirement, etc. He also discussed Attorney Pennington's motion to deny backpay and the written order from the Board, signed in February 2022. The occurrences after the ruling of the District Court in November was discussed. Attorney Montalbano asked the Board to order the City pay the difference in tax if paid to Mr. Romero in a lump sum, and his PERA be reinstated. Chairman Baca asked to see something that says the Board has the authority to order tax be paid, and that was discussed.

Attorney Stoker made his opening statement for the City and discussed Mr. Garcia's attempts to find a job while not working and stated this case took longer because of the Union's acts and the COVID-19 pandemic.

Union called Earl Garcia as first witness:

Chairman Baca swore witness in.

Attorney Montalbano directed Mr. Garcia to Tab 3, page 2 of the exhibit notebook to review the calculation of backpay. Mr. Garcia corroborated the dates he was unemployed and the amount of pay listed. They discussed his job title and talked about benefits and pay he would have received. They discussed Mr. Garcia's attempt to apply for unemployment and the City appealing his award. They discussed how much extra money was being offered due to COVID from the Federal and State Government. Attorney Montalbano discussed Mr. Garcia's benefits being terminated and his inability to find work in 2020 due to the COVID-19 pandemic. Mr. Garcia talked about how he covered his bills while unemployed, and his job search history along with his work skills and the re-occurring issues he ran into when applying for jobs. Union rested.

City cross-examination:

Attorney Stoker discussed with Mr. Garcia the application for UI benefits and the appeal hearing. Mr. Garcia stated he did not know he could appeal the UI decision. Attorney Serrano discussed timelines on hearings and court rulings. Attorney Serrano went over the jobs Mr. Garcia said he applied for since his termination in 2020 and discussed him borrowing money from his son, grandmother and girlfriend to mitigate his losses. City rested.

Union brief redirect:

Attorney Montalbano asked about Mr. Garcia's incarceration being at the time of the UI appeal hearing, and why he had been incarcerated. Union rested.

City follow-up question:

Attorney Serrano discussed Mr. Garcia applying for Medicaid and if he received it.

Union follow-up:

Attorney Montalbano discussed if Mr. Garcia qualified for Medicaid after his probation violation.

10:08 am Chairman Baca called for a 15-minute recess, to be back at 10:25 am.

Back on record at 10:22 am.

Chairman Baca asked if the City was ready to proceed and they said they were.

City Calls first witness, Sarah Endicott:

Chairman Baca swore witness in.

Attorney Stoker discussed Ms. Endicott's title and duties at the City along with how long she had served in her current job. They discussed backpay calculation work and her calculation for Mr. Garcia. They discussed what is done if a rate of pay changes, along with how it is confirmed and calculated. Longevity pay was discussed. Ms. Endicott mentioned they also look to see if the employee was eligible for shift differential, leave accrual rates, social security and Medicare tax. She also stated PERA and retiree health deductions are reviewed. Percentages paid to PERA by City employees and the City were discussed. Attorney Stoker moved to admit City's Exhibit 4 into evidence. Admitted by the Board.

Attorney Stoker reviewed with Ms. Endicott the backpay calculations that included longevity pay. Gross payment does not include deductions for PERA or retiree health. Cost to City of Albuquerque box on exhibit was discussed, which is how much the City additionally owes. Ms. Endicott mentioned there was a possibility the City could owe interest on the PERA amount,



due to the amount of time that had passed since Mr. Garcia was terminated. Once back wages are approved, Ms. Endicott submits the information to PERA, and PERA calculates exactly what is owed. The back-wage settlement section was discussed. Longevity value was discussed. PERA and retiree health deductions were discussed. Mr. Garcia stated pay was increased while he was not working. Ms. Endicott said there was not a pay change until he started back in June, then shortly after was another. No change in rate in 2021 or 2022. PERA contribution rates were discussed. Vacation accrual rates were discussed. Retiree health was discussed. Leave payout value was discussed. PERA cash-out without retirement was discussed. The detailed image of the final pay-out check from 2022 for vacation time was discussed. Attorney Stoker discussed what the leave totals were when Mr. Garcia was terminated. Minimum wage was discussed and how a yearly earnings calculation would be done. City's Exhibit 7 with minimum wage rates was shown to Ms. Endicott. The amount of money someone could earn for the year of 2020 through June 2023 was calculated. Passed witness.

**Union cross-examination:**

Attorney Montalbano asked to calculate the difference between what Mr. Garcia would have earned at the City and while working a minimum wage job and arrived at the approximate value of \$67,000.00. The Union calculated out loud wage increases from 2020 to current. Attorney Montalbano asked Ms. Endicott why she used a wage value of \$18.77 for all calculations. She replied she had not see those wage increases when doing her calculations. Ms. Endicott agreed that it would be higher using the increased pay rates. Exhibit 4, page 1, which shows what is owed, was reviewed. Ms. Endicott mentioned if Mr. Garcia's pay rate had increased, the PERA numbers and such would also increase. Ms. Endicott noted she missed a field when adding up totals and stated these figures do not include vacation. Attorney Montalbano asked if Ms. Endicott was made aware of increases in blue collar jobs and she replied that she did not recall. Union rested.

City had no redirect. Witness excused. City does not wish to call another witness. Parties rested.

**Union closing:**

Attorney Montalbano asked that the Board consider a remedy to make Mr. Garcia whole, with base salary including increases each year. The calculations the City submitted are inaccurate, and the amount of backpay should instead be based on what Mr. Garcia would have actually been paid. The Union argues that Mr. Garcia's duty to mitigate losses was considered a reasonable effort. Due to COVID-19, everything was complicated. Mr. Garcia cashed out his PERA account, borrowed money, etc. The law states he is to make a reasonable effort to find a job, which the Union feels he did. Attempts to schedule merits hearings and motions to dismiss and vacate were discussed. Mr. Garcia's difficulty finding a job during COVID was discussed. The Union argues the City could have put Mr. Garcia back to work in March 2022, but waited until June 2023. The Union asked the Board to consider raises since Mr. Garcia's termination, through June 2023 and that he be awarded the full amount, have his PERA reinstated, be paid interest where applicable, and that the City provide a tax offset to make him whole. Attorney Montalbano asked that Mr. Garcia not be punished. Union rested.

**City closing:**

Attorney Serrano stated Mr. Garcia did not mitigate his disadvantages from January 2020 to June 2023. Construction workers were essential workers during the pandemic and he failed to make a minimum, good faith effort. Attorney Serrano stated Mr. Garcia made no efforts and voluntarily removed himself from the work market. Rulings on other cases by courts were discussed concerning backpay. The City asks the Board award no backpay. If the Board awards any monetary compensation, the City is immune to pre-decision taxes. The City asked the Board to award nothing, but if anything is awarded, it be capped at \$68,000.00. City rested.

Chairman Baca made a motion 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. Mr. Montoya seconded. A roll call vote was taken and the motion passed 3-0. Session was closed at approximately 11:43 a.m.

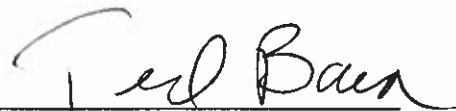
The Board returned to open session at approximately 12:06 p.m. The meeting had been in closed session pursuant to Section 10.15.1.H.3 of the Open Meetings Act. Chairman Baca stated the Board was in closed session to discuss and deliberate on LB 20-09 and no other matters were discussed.

Mr. Montoya moved to award Mr. Garcia \$113,000.00. Chairman Baca seconded. Voted passed 3-0.

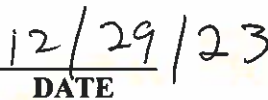
Attorney Stoker asked about accrual leave. The Board told the parties to discuss the matter among themselves and come back to the Board if not resolution is reached.

**VI. ADJOURNMENT.**

Mr. Montoya moved to adjourn at 12:08. Chairman Baca seconded. Meeting adjourned.



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



**DATE**