

BEFORE THE LABOR MANAGEMENT RELATIONS BOARD
OF THE CITY OF ALBUQUERQUE, NEW MEXICO

NEW MEXICO TRANSIT UNION, et al.

Complainants,

vs.

LB-03-31

CITY OF ALBUQUERQUE et al.

Respondents.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Respondents, through undersigned counsel, herewith submit their Memorandum in Support of Motion to Dismiss.

I. FACTS AND PRIOR PROCEEDINGS

1. In January 1997, the United Transportation Union (hereinafter UTU), predecessor to the New Mexico Transportation Union (hereinafter NMTU) filed a prohibited practices complaint against the City of Albuquerque and Mayor Martin Chavez, LB 97-02, alleging that the City's practice of setting a negotiating guideline prior to commencing negotiations with the union constituted a prohibited practice and violated the City Labor Relations Ordinance prohibition on interfering with bargaining negotiations.

2. On June 4, 1998 the Labor Board issued a decision finding against the union. That decision stated, in part, "It is not a prohibited practice for a party to announce its demands prior to the commencement of negotiations

and to stick to those demands during the course of negotiations.” This decision was not appealed by the union. Exhibit A.

3. In January 1997 the UTU filed a prohibited practices complaint, LB-97-18, again alleging that the practice of setting a guideline for negotiations violated the City Labor Management Relations Ordinance.

4. On June 18, 1998 a written decision was entered by the Labor Board dismissing the complaint. In that decision, the Labor Board held that it does not have authority to order the City Council or Guidelines Committee to appropriate more money. Exhibit B.

5. The UTU appealed the dismissal in July 1998 to the New Mexico District Court. Following a hearing before the District Court, Judge Teresa Baca ordered complainants’ counsel to prepare an order reflecting the judge’s ruling. Counsel failed to obtain entry of an order and the appeal was dismissed on September 28, 2000. The UTU did not timely file a motion to reinstate the appeal with the Court. Exhibit C.

6. The order of dismissal entered by the Labor Board on June 18, 1998 remains in effect as a result of the dismissal of the complainant’s appeal. That decision is a final action.

7. In September 1999 the UTU filed a prohibited practice complaint, LB-99-14, which alleged, in part, violations of the 13(c) agreement, as well as additional prohibited practices. That case is still pending a hearing. Exhibit D.

8. In February 2000 the UTU filed a complaint in the New Mexico District Court. Count I of that complaint alleged that the City had breached the section 13(c) agreement by failing to submit unresolved collective bargaining

issues for arbitration. Exhibit E. The City removed that case to the United States District Court, CIV 00-380 JC/RLP.

9. On March 26, 2001 the parties filed a stipulated notice of voluntary dismissal in CIV 00-380 JC/RLP. The stipulation recognized that the union needed to submit the question of whether the section 13(c) required arbitration of unresolved collective bargaining issues to arbitration pursuant to the section 13(c) agreement. Exhibit F.

10. CIV-00-380 JC/RLP was dismissed on March 29, 2001 pursuant to the stipulated voluntary dismissal filed the parties. Exhibit G.

11. The UTU never submitted a request for section 13(c) arbitration as anticipated in Exhibit G to determine if the unresolved collective bargaining issues were subject to arbitration pursuant to the 13(c) agreement.

12. On May 9, 2001 the UTU filed a prohibited practiced complaint, LB-01-06, alleging in part that the City had engaged in bad faith bargaining regarding “a decision on 13(c) matters of arbitration,” although no specific facts related to any request for 13(c) arbitration were alleged. Exhibit H.

13. On September 19, 2003 NMTU, successor in interest to the UTU, filed a prohibited practices complaint, LB-03-31, alleging in part that:

a. The City’s has failed to comply with the binding arbitration provisions of the section 13(c) agreement by failing to submit the outstanding collective bargaining issues to 13(c) arbitration. Complaint, paragraph 12.

b. The City’s practice of applying a financial limit or guideline established prior to negotiations and imposed without consideration of the individual needs and priorities of the employees constitutes bad faith bargaining. Complaint, paragraph 21.

14. The issues of 13(c) arbitration and the practice of applying a financial limit or guideline prior to negotiations have been previously decided and are not properly before the Labor Board.

- a. Pursuant to Judge Conway's Order, Exhibit G, claims based on 13(c) were dismissed with prejudice.
- b. Claims concerning applying a financial limit were dismissed by this Board, Exhibits A and B, and are final.

II. ARGUMENT

A. ESTABLISHING A GUIDELINE PRIOR TO NEGOTIATIONS IS NOT A PROHIBITED PRACTICE

In 1997, the UTU filed a prohibited practices complaint against the City. The Labor Board issued a written decision in that case following a full hearing. The Labor Board's decision stated that the practice of establishing a guideline prior to entering into negotiations does not constitute a prohibited practice. Exhibit A. That decision was never appealed by the union. The City Labor Management Relations Ordinance expressly provides that if a party does not agree with the decision of the Labor Board it has the right to appeal that decision within 30 days. The union never appealed the decision in LB-97-02.

In LB-97-18 the union made a similar allegation, once again claiming that the practice of establishing a guideline for negotiations was a prohibited practice. The written decision in that case dismissed the union's claims, stating in part that the appropriate place to address these issues was at the negotiating table or through the City Council and that the Labor Board has no authority to order the City Council to appropriate additional funds. Exhibit B.

The union appealed the decision in LB-97-18 to the New Mexico District Court. Judge Teresa Baca indicated at the hearing that LB-97-18 should be

remanded for a hearing, and instructed the union's counsel to submit an appropriate order and, if necessary, request a presentment hearing. Exhibit I, Transcript of Hearing, p.19. When complainants failed to timely file an order remanding this case to the board and did not request a presentment hearing or take any other affirmative action in this matter as required, the case was dismissed for failure to prosecute. Exhibit C.

The purpose of a dismissal for failure to prosecute is to prevent a party from harassing "the opposing party with a pending action for an unreasonable time" and to avoid situations where a party is permitted to keep an action pending indefinitely. King v. Lujan, 98 N.M. 179, 181 (1982). The result of the dismissal is to place the parties in the position they would have been in had the action never been filed. King. This means that the decision in LB-97-18 is the final decision on that issue.

The union has now raised the identical argument at least three times and lost each time. It has twice filed complaints alleging that the practice of establishing a guideline is a prohibited practice. In the first case a full hearing was held and the Labor Board ruled against it. In the second case the complaint was dismissed. The union then appealed that dismissal in an effort to have the issue heard but failed to take any action to bring that appeal to a conclusion. It has now been over six years since the decisions in these two cases became final. The union's efforts to again raise this same issue in the present proceeding appear to be nothing more than an attempt to re-litigate a claim that has previously been decided by the board. To permit the union to again raise this issue is to permit the union to endlessly harass the

respondents on an issue that has already been decided, exactly the type of ongoing harassment that is clearly disfavored by the New Mexico Courts. King.

Those portions of LB-03-13 which allege that it is a prohibited practice to establish a guideline prior to entering into negotiations should therefore be dismissed.

B. COMPLAINTANTS' 13(C) CLAIMS ARE NOT PROPERLY BEFORE THE LABOR BOARD.

The City has consistently maintained that the Section 13(c) agreement between the parties requires only rights arbitration, meaning that the arbitration is only required when an existing written agreement is violated. Based on this position, outstanding issues that are not part of a present written agreement, such as unresolved collective bargaining issues, constitute "interests," not "rights" and therefore are not subject to the section 13(c) arbitration provisions. The union, on the other hand, believes that all unresolved collective bargaining issues are subject to section 13(c) interest arbitration. Exhibit H.

In 2000 the UTU, as predecessor to the NMTU, filed a complaint in the New Mexico District Court concerning this issue. Exhibit E. That case was ultimately removed to the United States District Court and subsequently dismissed pursuant to the Stipulated Notice of Dismissal filed by the parties. Exhibits E and F. The stipulation of voluntary dismissal recognized that the correct approach to deciding this issue is to submit the question for binding arbitration pursuant to the section 13(c) agreement to determine if unresolved collective bargaining issues are subject to section 13(c) arbitration. Exhibit E.

Rather than going forward and submitting this question for arbitration, the union has chosen simply to file repeated prohibited practices claims against

the City with the Labor Board alleging that the failure to submit the unresolved issues for section 13(c) arbitration constitutes a prohibited practice. Exhibits D, G and H. The record in CIV 00-380 JC/RLP, however, makes it clear that filing repeated complaints over this issue before the Labor Board is inappropriate. The appropriate method for the union to use in addressing this issue is through a request for section 13(c) arbitration to determine if the agreement requires interest arbitration. As with the complaints alleging that establishing a guideline prior to negotiations is a prohibited practice, the union's actions are nothing more than an attempt to endlessly harass the respondent on previously decided issues. The present claim based on the alleged violation of the section 13(c) agreement should therefore be dismissed as it is not properly before the Labor Board.

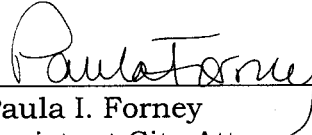
III. CONCLUSION

For the foregoing reasons, the respondents request the Labor Board:

- A. Grant their motion.
- B. Dismiss Respondent's 13(c) claims.
- C. Dismiss Respondents' claims that applying a guideline constitutes bad faith negotiations.
- D. For such other relief as the Board deems just and proper.

Respectfully submitted,

CITY OF ALBUQUERQUE
Robert M. White
City Attorney

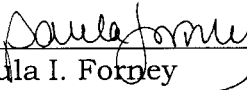


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I hereby certify that a true copy
of the foregoing was mailed to:

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this 11th day of February 2004.


Paula I. Forney