

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

**NEW MEXICO TRANSPORTATION UNION,
ROBERT GUTIERREZ, Interim Chairman,
CITY MOTORCOACH OPERATORS,
and SUN VAN DRIVERS,**

Complainants,

vs.

**CITY OF ALBUQUERQUE,
MARTIN CHAVEZ, Mayor,
JAY CZAR, Chief Administrative Officer,
ALBUQUERQUE CITY COUNCIL,**

Respondents.

**COMPLAINT OF UNFAIR AND
PROHIBITED LABOR PRACTICES**

Complainants **NEW MEXICO TRANSPORTATION UNION** (the “Union”), **ROBERT GUTIERREZ**, Interim Chairman, and **CITY MOTORCOACH OPERATORS** and **SUN VAN DRIVERS**, present the following Complaint of Unfair and Prohibited Labor Practices, stating as grounds:

THE PROBLEM

This year, the City of Albuquerque has again put the employees last, approving no money for wage and salary negotiations. The Mayor concedes that City employees have gone at least three years without being able to bargain over economic issues and without any pay raises. Mayor Chavez’s administration has effectively destroyed the Collective

Bargaining process for City employees by determining, prior to the start of the budgetary process, the amount of money, if any, to put towards improving wages, salaries, hours, and working conditions. For the past three years that amount has been “zero.”

Although the Mayor reports “finding” \$7.2 million, he proposes “giving” that money to employees in the form of seniority-based “bonuses.” One City Councillor proposes giving step raises to police and fire unions, with nothing going towards members of any other bargaining unit. For a small, independent labor union representing City employees, the need for legal relief is apparent.

THE FACTS

1. The New Mexico Transportation Union is the successor to United Transportation Union, Local 1745. The NMTU is an independent, unincorporated association formed for the purpose of bargaining for and representing bus and van drivers at the City Transit Department.

2. The Union has previously challenged the City’s practice of establishing a “guideline” fixing the amount of money available for wage and benefit negotiations prior to the start of collective bargaining negotiations.

3. The City’s Labor Board has never squarely faced the issues raised herein. See, e.g., LB-97-18, remanded to Labor Board, see attached transcript.

4. The budget adopted by the City Council for this year contains no money for wages, salary, and benefit increases. The Mayor has announced that, as for the last three years, there will be no pay raises this year either.

5. The NMTU entered into “interest based bargaining” (IBB) with the City, assisted by a Federal Mediator.

6. The City claims to have “no money” to put towards increases in wages or benefits and refuses to negotiate mandatory subjects of bargaining.

7. Prior to the start of negotiations Petitioners asked for a meeting with the City Council’s Guidelines Committee. Respondents finally scheduled a Guidelines Committee meeting at the end of negotiations, on June 2, 2003.

8. No quorum was present at the scheduled meeting of the Guidelines Committee; the Committee failed to comply with the New Mexico Open Meetings Act.

9. On the scheduled final day of negotiations, NMTU asserted that the City was negotiating in bad faith and requested binding interest (contract) arbitration in accordance with the terms of the Union’s Section 13(c) agreement with the City.

10. Despite the absence of meaningful collective bargaining or other dispute resolution mechanism, the City has refused to enter into binding contract arbitration.

11. Mayor Chavez announced the discovery of \$7.2 million, which he has proposed giving to City employees in the form of bonuses. The Mayor has admitted that the City has not engaged in meaningful collective bargaining – and consequently, its employees have not received raises – for at least three years.

THE LAW

12. The City’s Labor-Management Relations Ordinance (“LMRO”), Section 3-2-7, provides the “Duty to Bargain:”

The city government and any employee organization recognized as the exclusive representative . . . shall bargain concerning hours, salary, wages, working conditions and other terms and conditions of employment This duty includes an obligation to confer in good faith with respect to terms and conditions of employment.

13. The LMRO, Section 3-2-9(A), provides that it is a Prohibited Practice for the City to refuse “to negotiate in good faith.”

14. The LMRO, Section 3-2-9(C) prohibits City officials from interfering with “the normal progress of negotiations:

It shall be a prohibited practice for any elected or appointed official of the city government or for any employee organization, group of city employees or individual city employee to attempt to influence negotiations or to interfere with the normal progress of negotiations between the duly authorized negotiating teams of the city government and of the employee organization.

15. The LMRO, Section 3-2-17(A) provides that the City’s Guidelines Committee “shall, in accordance with the New Mexico Open Meetings Act, promulgate rules to effectuate the purposes of this section” and pursuant to Section 3-2-17(B) “shall meet in closed session with appropriate staff in accordance with the New Mexico Open Meetings Act as necessary to discuss bargaining strategy preliminary to collective bargaining negotiations between the city and employee organizations.” The LMRO, Section 3-2-17(C), provides that:

At the time negotiations are opened, the Guidelines Committee shall entertain a presentation from the employee organization involved in the subject collective bargaining negotiations summarizing its positions and proposals in the upcoming negotiations so the Guidelines Committee may be fully informed.

16. A City Ordinance, Section 3-2-18, LMRO, adds a section to the Labor-Management Relations Act, providing that:

Any contract between the city and an employee organization, which contains provisions that result in expenditures greater than the amount, appropriated for wages and benefits in an adopted city budget for the initial fiscal year of the contract or which contains a multi-year commitment shall require the review and approval by the City Council. In order for any contract to be approved by the City Council, the City Council must approve the economic components of the contract through an executive communication and adopt a resolution providing an appropriation or deappropriation or both to cover the cost of the contract. All such contracts shall contain re-opening language for economic items.

NMTU CLAIMS OF PROHIBITED LABOR PRACTICES

17. The City has failed to comply with the terms of the City's Labor-Management Relations Act providing employee rights, protections, and opportunities to negotiate. In addition, the City has added restrictions on the negotiating process and practice which effectively eliminate meaningful collective bargaining between the City and its workers.

18. Respondents are required to maintain a functional collective bargaining process for City Transit employees pursuant to terms of the City's Labor-Management Relations Ordinance (LMRO) and the Section 13(c) agreement between the City and the

Union. The City has failed to maintain a functional bargaining process and refuses to comply with the binding interest arbitration provisions of the Section 13(c) agreement.

19. LMRO Sections 3-2-17 and 3-2-18 add procedures and requirements to the City's collective bargaining process which substantially limit the authority of the negotiators and compromise the ability to collectively bargain over the wages, hours, and terms and conditions of employment.

20. LMRO, Section 3-2-18 requires City Council approval, pursuant to an Executive Communication from the Mayor, of any multi-year contract and any contract that exceeds the budgetary allowance, thereby ensuring that elected and appointed officials will "interfere with the normal progress of negotiations" in violation of Section 3-2-9(c).

21. Application of 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 which compromises the collective bargaining process and limits or removes the employees' rights to bargain collectively.

22. Respondents have failed to allow the employees to present their cases to the City Council's guidelines committee in accordance with provisions of the Labor Management Relations Act.

23. The Mayor's "bonus" proposal, like Councillor Cadigan's proposal to benefit only police and fire unions, constitutes very serious interference with the normal course of collective bargaining and attempting to influence negotiations.

24. By their acts and omissions Respondents have committed prohibited labor practices in that they violated the public policy, purpose, and provisions of the Labor-Management Relations Act and the collective bargaining and representational rights of the City transit unions and the transit employees by:

- a. Placing a “guideline” or limit on wage and benefit increases prior to the initiation of bargaining;
- b. Interfering with the right of City employees to bargain collectively with the City;
- c. Refusing to negotiate in good faith;
- d. Negotiating in bad faith and failing and refusing to negotiate over mandatory topics of negotiation;
- e. Interfering with the normal course and progress of negotiations by elected and appointed officials.

WHEREFORE, the City’s Labor Board is respectfully requested to schedule and hold a public hearing of evidence and testimony in accordance with law on the foregoing allegations of prohibited labor practices and the City’s defenses to these allegations.

Submitted by,

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I hereby certify that copies of the foregoing were served on each of the respondents by e-mail, delivery, or facsimile on September 19 and 22, 2003

Paul Livingston