

CITY OF ALBUQUERQUE LABOR BOARD

(February 9, 2004)

TAPE 2; Side A (190)

PATRICK HALTER: I think our arrangements were, that concludes the hearing portion, evidentiary portion on this proceeding on the Family and Community Services and I think the understanding was now that we we were going to hear on status report on item number 10 on the agenda, this is LB-03-31 and then after we hear this we're going to go into closed session.

PAULA FORNEY: I told you I will be short and sweet. I have nothing to say other than the status report that I submitted to you.

MR. HALTER: Did we get that?

MS. LATTIMORE: ... it all seems to be running together.

MS. FORNEY: Sorry about that, it looks like this.

MR. LIVINGSTON: Have I seen that?

MS. FORNEY: Yes indeedy. It was sent to you, yes sir. It was sent to you.

MR. LIVINGSTON: If I could see a copy of that - I'm sorry, I have not seen that.

MS. FORNEY: It was filed. That's all I can say. And it was sent to you, yes, I certified sending; I did not put the date on, I don't know why the date isn't on, but it was certified sent to you.

MR. LIVINGSTON: Well that's really nice; I never got it,

1 Paula. I think you have an obligation to send me things and put a  
2 date on it if you really think you sent it.

3 MS. FORNEY: Paul.

4 MR. LIVINGSTON: You mailed it. You don't know about the  
5 fax machine?

6 MS. FORNEY: Did you all, did members of the Board  
7 not get that, well we filed it - (unintelligible) And I don't have  
8 anything else to add, other than what's in that status report. Do  
9 you want me to read that into the record I'm happy to do that.

10 MS. LATTIMORE: Could you give us a precis?

11 MS. FORNEY: We submit the status report per the  
12 Board's instructions, the City forwarded the response to  
13 Plaintiffs' discovery request to counsel of record on January 26  
14 and then we attached responses to discovery request. In response  
15 to their request to interview witnesses we agreed to make certain  
16 specific witnesses available for them to interview and have advised  
17 them of the grounds for objecting to the other ones; we attached  
18 copies of that letter. We are presently attempting to schedule the  
19 interview with Barbara Keiser and Peter Behrman in March of 2004 in  
20 compliance with that request. Pursuant to the Board's direction  
21 that the parties should confer regarding the consolidation of  
22 still-pending Transit Union cases, on February 2nd we sent a letter  
23 to the Union requesting that they agree to consolidate all claims,  
24 and we listed them out, involving the City's practice of  
25 establishing a guideline for negotiating salaries and claims

1 involving alleged violations of the 13(c) agreement. That letter  
2 was sent. We have received absolutely nothing from Complainants.  
3 That's the status from our point of view. (242).

4 MR. HALTER: The Union's status report, please.

5 MR. LIVINGSTON: Yeah, thank you. Unfortunately, what  
6 Ms. Forney tells you is only partially true. The City has declined  
7 to respond to virtually all of our requests for records and  
8 documents. And, to follow that up, I presented the City with an  
9 Inspection of Public Records request. The first thing we requested  
10 was Memoranda of Understanding. The City claims it doesn't have  
11 the staff to search for Memoranda of Understanding; they don't keep  
12 them in a file folder like normal people would, and so they refuse  
13 to turn over any Memoranda of Understanding, including the ones  
14 from a few months ago that our Union president signed when the  
15 Mayor made them sign a memorandum to get a bonus; so each employee  
16 could get \$750.00. And of course that's essential to our case.

17 The City refused to produce any records relating to the Labor  
18 Board or anything like that before 2002, because they claim they've  
19 actually destroyed records of the Labor Board and the Personnel  
20 Board, and it would appear that those are public records. They've  
21 refused to give us any records of meetings or activities of the  
22 City Guidelines Committee except one set of minutes that was the  
23 meeting that we had with the Guidelines Committee. They've refused  
24 to give us transcripts of Labor Board hearings, even though they've  
25 been transcribed. They refuse to give us records concerning any

1 payment or bonus requests. They refuse to give us any records of  
2 the Mayor's plan of proposal and disbursement of the bonus to City  
3 employees, including memos and that sort of thing.

4 And the response is that, to everything, that they object that  
5 "the request is overly broad, unduly burdensome, and not reasonably  
6 calculated to lead to the discovery of admissible evidence. The  
7 City of Albuquerque does not presently have the staff to search for  
8 every document requested for the past four years. Respondents  
9 further object to the request as it seeks information protected by  
10 attorney-client or executive privilege," and that's Marty Chavez's  
11 "executive privilege," "or protected as attorney work product  
12 without waiving this objection, and this is for the records of the  
13 Mayor's office concerning the distribution of bonuses, and that was  
14 within the last six months, or even more recently, respondents are  
15 presently attempting to locate the documents responsive to this  
16 request and will supplement this answer if responsive documents are  
17 located."

18 We asked for opinions of the City attorney, and the City  
19 attorney's quarterly reports which are supposed to be filed with  
20 the Clerk's office and available to everyone, and their answer is  
21 they don't believe that would lead to the discovery of admissible  
22 evidence and they further object the request for documents are  
23 protected by attorney-client privilege or as attorney work product.  
24 They will produce any opinion made public and not otherwise  
25 privileged if Plaintiff will identify the subject matter of the

1 opinion. So we have to know what we're looking for and ask for  
2 them specifically and maybe they'll give it to us.

3 Now we asked for records of the Labor Board, including  
4 minutes, notices, logs, agendas and decisions since January 1,  
5 2000, on computer disk to the extent they have that and they don't  
6 say they have any of that, maybe. They'll let us pay for paper  
7 records, maybe. We asked for records of collective bargaining  
8 negotiations since January 1, 2000, and that's not a very long  
9 period of time. They object to request is overly broad, not  
10 reasonably calculated, etc., and then they say documents regarding  
11 negotiations with the only party to this matter, the United  
12 Transportation Union are expected to be in the possession of the  
13 Complainants and therefore obtainable through research of their own  
14 records. Negotiations with other bargaining units are  
15 confidential, pursuant to the Labor-Management Relations Ordinance,  
16 which requires such to be conducted in closed session and  
17 production of any such records would require a signed release from  
18 any bargaining unit. (K310)

19 And we asked for records about the resolution of any Labor  
20 Board case, including - and this is very important, I think -  
21 including a copy of the letter or report sent to the Mayor, because  
22 it is our understanding that the law requires that when the case is  
23 concluded that there be a report to the Mayor, and that's what is  
24 either appealable or actionable in Court or otherwise, and it's  
25 also our understanding that the City has never done that, that the

1 Labor Board has never done that. We don't think they've ever sent  
2 a letter to the Mayor with a report about a case. So, the City's  
3 response to that is: "Respondents object to this request as overly  
4 broad, unduly burdensome, and not reasonably calculated to lead to  
5 the discovery of admissible evidence in this matter. Without  
6 waiver of this objection, copies of all Labor Board decisions from  
7 2000 to 2003 are attached. And so they gave us this. Which we had  
8 already. So that's the City's response to records requests. (320;  
9 8:30)

10 Then, their response to having witnesses was very similar.  
11 Mayor Chavez, the response: "The request to depose Mayor Chavez is  
12 not reasonably calculated to lead to the discovery of admissible  
13 evidence, is unduly burdensome, and is requested solely to harass,  
14 oppress or annoy Mayor Chavez and seeks information protected by  
15 Executive privilege. There are no allegations in the Complaint  
16 involving Mayor Chavez other than the allegation that he utilized  
17 7.2 Million Dollars to provide bonuses to City employees, a plan  
18 that was approved by the Unions and a fact admitted by the  
19 Respondents. There is no information tending to establish that  
20 Mayor Chavez has any additional knowledge relevant to this matter."

21 Paul Broome. The City objects to this request "as  
22 seeking information protected by attorney client privilege and as  
23 attorney work product." Jay Czar, "the City objects to the  
24 request to depose Mr. Czar as not reasonably calculated to lead to  
25 the discovery of admissible evidence, burdensome, designed to

1 harass" - and I object to that, because we're not trying to harass,  
2 oppress or impose anyone, or annoy or anything like that, and the  
3 accusation from the City that we are doing that is just needless,  
4 superfluous and it's contrary to the methods and operation of the  
5 Labor Board, to say that just because we want to speak to the Chief  
6 Administrative Officer.

7 No Eric Griego, City Counselor, who has expressed views on  
8 Labor Contracts, as related to the Mayor's bonus and collective  
9 bargaining. I don't think he even knows about this, but the City  
10 objects to the request to depose Mr. Griego as not reasonably  
11 calculated to lead to the discovery of admissible evidence and  
12 designed solely to harass, annoy or oppress Mr. Griego. There are  
13 no allegations involving any action by Mr. Cadigan - they just,  
14 they're wordprocessor, they didn't change the word Cadigan to  
15 Griego, identified in the Complaint in this matter and no  
16 information establishing that Mr. Cadigan has any knowledge  
17 relative toto this matter. And, of course the response from Mr.  
18 Cadigan is the same. Each of the Union presidents, they object to  
19 that as not reasonably calculated, there's no allegations in the  
20 Complaint about any union other than the NMTU. If you wish to  
21 schedule the depositions of Barbara Keiser or Peter Behrman, he's  
22 the Transit Director - in this matter please contact my paralegal.  
23 Well, I did that, and I was told Ms. Forney is too busy to do this  
24 until March, I believe 4th or 5th, I believe is what they said was  
25 the first time we could take even those two depositions. So, I

1 went back to a - -

2 MR. HALTER So, are you taking those depositions on the  
3 4th or 5th?

4 MR. LIVINGSTON: March 4th or 5th; we agreed to do that, but we  
5 would ask you if you could possibly move that up, because we'd like  
6 to get going with this, this whole process.

7 MS FORNEY: I haven't gotten a notice of this -

8 MR. LIVINGSTON: We haven't sent a notice, I thought I agreed  
9 with Mr. Palmer, Your paralegal that we would hold them on that  
10 date, that's all. (368) (11:40)

11 So I went back and I took from about six years ago a Labor  
12 Board decision. And this says, in the instant matter, the Union  
13 seeks the testimony of the Mayor and certain City Councilors. The  
14 Unions also seek the production of certain documents, created and  
15 considered by these officials related to the alleged prohibited  
16 practice. And this was the same prohibited practice that we're  
17 before you now on, this was 97-18, I believe. In nearly all  
18 instances the testimony and documents of such City officials would  
19 not be permitted, as the nuts and bolts of Labor management  
20 relations rarely involve their participation. However, given the  
21 specific allegations in these Complaints, i.e. that the Mayor and  
22 City Council interfered in the collective bargaining process  
23 between the City and its recognized collective bargaining  
24 representatives, it appears to the Board that the documents and  
25 testimony of these witnesses are not only material, but may be

1 essential to the adjudication of these matters. Notwithstanding  
2 this Board's advice that it will require such testimony and  
3 evidence, the City has unequivocally represented that it will not  
4 comply with the Board's order if issued, and that resolution by the  
5 Court is necessary. Based on the foregoing it is Ordered that One,  
6 the merits hearing in LB 97-02 is hereby continued to May 27,  
7 1997," and that the merits hearing in the consolidated matters of  
8 LB 97-04 and 97-05 are continued to June 16, 1997, so we're more  
9 than six years ago, "appropriate notice will be issued."

10 "Two, the City shall immediately produce those documents in  
11 its possession, custody, or control requested by the Unions and  
12 previously withheld by the City pursuant to its asserted executive  
13 and alleged legislative privilege."

14 "Three, the City shall immediately produce the Mayor and City  
15 Councilors for pre-hearing discovery, and such witnesses shall be  
16 made available for the merits hearings previously scheduled herein;  
17 and Four, because the City has unequivocally represented that it  
18 will not engage in discovery to which it has objected and will not  
19 make available any of the requested witnesses for discovery and  
20 trial purposes, the parties are hereby granted leave to make  
21 immediate application to a Court of competent jurisdiction to  
22 enforce this Board's Order.

23 Five, the Board will not order mediation, however the parties  
24 are encouraged to participate in discussions to clarify, and if  
25 possible, to formalize, collective bargaining procedures conforming

1 to the requirements of this ordinance, that the mediator or  
2 facilitator is asked to participate in these discussions, the City  
3 and the Unions will be responsible for paying his or her costs.”  
4 Signed, E. Justin Pennington, Board member, for the Board. And  
5 that is the same Board that you are; it is the same situation, and  
6 we would ask the Board to make the same orders. (415) (14:30)

7 MS. FORNEY: That case is long gone. Ha.

8 MR. LIVINGSTON: Well, that case isn't long gone, because Ms.  
9 Forney just agreed that we could consolidate those cases and those  
10 were the same issue as she just heard me say. And there's one more  
11 problem, and Mr. Gutierrez just called it to my attention. I've  
12 thought of not even addressing the City until they change their  
13 heading of this case, which is "violation of collective bargaining  
14 agreement." And this is designed, we think, to insult and  
15 humiliate us, because we can't get them to change it, no matter how  
16 many times we tell the Board, we tell them, we tell Cathy, we tell  
17 everyone, it doesn't do any good. Every letter Ms. Forney sends  
18 me, this is dated February 3rd, "violation of collective bargaining  
19 agreement." I'll say it as clearly as I can, we are not here  
20 before you on violation of a collective bargaining agreement, which  
21 expired one year ago today. It expired February 8, 2003, and now  
22 we're in 2004, we still don't have a collective bargaining  
23 agreement. And more importantly, neither to all of the other City  
24 Unions, except one, the Fire Department, and they're about to  
25 expire on February 20th. So this is a very serious situation, the

1 City is clearly stone-walling us, clearly doing exactly the same  
2 thing, and then she can say, "that case is long gone." Well, the  
3 City would like it if the Board was long gone, and they had no  
4 authority whatsoever, and now -

5 MR. HALTER: This is what I hear. There are  
6 depositions set on two employees March 3 and 4 or 4 and 5, correct?  
7 Okay, so whatever preparations you two counselors need to make, to  
8 make that happen, it needs to happen.

9 MS. FORNEY: Can I also object -

10 MR. LIVINGSTON: What about the Mayor?

11  
12 MR. HALTER: Just a second; I'm not finished.

13 MS. FORNEY: Can I suggest one other thing. Mr.  
14 Livingston has read all of this stuff into the record, but that  
15 doesn't make it a motion to compel or a motion for some sort of  
16 relief on those responses or on our information in the letter. I  
17 would suggest that the Board request that he put in writing, his  
18 position so that there some way that the Board has something to  
19 rule on.

20 MR. HALTER: What I'm, I'm interested in moving this  
21 case forward, and what I recommend to my colleagues here, is that  
22 we direct the parties to a hearing officer, making the selection by  
23 themselves, or we can appoint somebody, and I would recommend that  
24 you have fresh eyes take a look at this and you get someone from  
25 out of state, either through the American Arbitration Association,

1 or someone from the Federal Mediation and Conciliation Service.  
2 With respect to whether or not this person is going to be deposed,  
3 or whether you're going to get this piece of evidence or not, you  
4 could present those to the hearing officer. If you get someone's  
5 competent, they can either draw an adverse inference from it or do  
6 whatever is appropriate in the circumstances. The case will move  
7 along much quicker, towards resolution one way or the other in the  
8 form of a hearing officer report which would then be presented to  
9 us, and then we could make a determination whether to adopt that  
10 hearing officer's report, or not to adopt it, or to modify it and  
11 set forth whatever remedy, if any remedy, would be appropriate.

12 MS. FORNEY: I think that would be great, Mr.  
13 Chairman. Will you order that the parties share the cost of that  
14 person?

15 MR. HALTER: It would be shared equally. (475)  
16 (17:45)

17 MR. LIVINGSTON: No, Sir. I think that's a way to avoid  
18 the hearing process that is set out by law. The law provides that  
19 there's a Labor Board, that the Labor Board shall hear cases.  
20 We've been through this before. We don't see any need to do  
21 something like that which could easily delay everything for a long  
22 period of time. And one of the problems we had -

23 DEBORAH LATTIMORE: One second, Paul. Didn't you used  
24 to argue that you should go to arbitration?

25 MR. LIVINGSTON: Binding arbitration. If we could have

1 binding arbitration we'll agree with you a hundred percent. But  
2 we're not going to take this kind of, "well, we'll then decide if  
3 its what we want to do or not what we want to do" because that's a  
4 waste of time.

5 MR. HALTER: The hearing officer arbitration is fine.

6 MR. LIVINGSTON: But then you get to decide what you want  
7 to do.

8 MS. FORNEY: That's correct.

9 MR. LIVINGSTON: That's not binding.

10 MS. FORNEY: That makes sense.

11 MR. LIVINGSTON: We need binding arbitration. The  
12 Board's Order is binding; the mediator, though -

13 MR. HALTER: We're not doing mediation.

14 MR. LIVINGSTON: You see, what we have under our 13(c)  
15 Agreement, and I was hoping not to bring that in, although the City  
16 agrees to combine the two in one of their agreements in their  
17 letter to me, what I was hoping to get out of that was what we're  
18 entitled to, which is binding arbitration, or mediation. But, no,  
19 non-binding means the City just laughs at us. Then they present  
20 something to the Board.

21 MR. HALTER: Well, this is -

22 MR. LIVINGSTON: And no, your Order is not enforceable  
23 unless the City will, as you I think heard from what I read there,  
24 the City needs to get a process going. Now, more importantly,  
25 right now, we've heard from some of the other Unions, that because

1 we filed a Prohibited Practice case, Paul Broome and Barbara Keiser  
2 are telling the Unions that we have held up bargaining for the  
3 City, for the entire City. They think we filed this Complaint last  
4 week, that's the rumor that they're passing around. And actually  
5 we filed it in September, and we are entitled to a hearing as soon  
6 as possible -

7 MR. HALTER: Okay. Well this is my motion and the  
8 Board members can go with this, or they -

9 MR. LIVINGSTON: Well, we're not going to agree; we're  
10 not going to agree to it, I'm sorry.

11 MS. LATTIMORE: Mr. Livingston, you're insisting that we  
12 hear it because that's what the Ordinance says and the hearing  
13 officer wouldn't work, but you just read something where Mr.  
14 Pennington stated that the Board could not enforce its Order.

15 MR. LIVINGSTON: No, it said the Board issues the Order;  
16 you can go to Court with that Order and get it enforced. That's  
17 what that said, and perhaps I read it too quickly, I'm sorry.

18 MS. LATTIMORE: Okay. That's why I wanted to clarify.

19 MR. LIVINGSTON: But that said very clearly, "the City is  
20 defying us, they say the Board's Order is not enforceable, we can't  
21 do anything, therefore the Board issues this Order, the Board says  
22 it's essential that we have the depositions and the statements of  
23 the Mayor in advance, and the documents we request, and you can go  
24 to Court," let me read that part again to you.

25 MS. FORNEY: That's not necessary, let's -

1 MS. LATTIMORE: I got lost; it's just a couple of  
2 sentences. It didn't scan.

3 MR. LIVINGSTON: "Because the City has unequivocally  
4 represented that it will not engage in discovery to which it has  
5 objected and will not make available any of the requested witnesses  
6 for discovery and trial purposes (and he means hearing before the  
7 Labor Board), the parties are hereby granted leave to make  
8 immediate application to a Court of competent jurisdiction to  
9 enforce this Board's Order." Now that's very clear, and that Board  
10 didn't even think of doing what you just suggested, Mr. Halter,  
11 which they said they will not order mediation, they didn't say they  
12 would order mediation, they said "go to Court with our Order,  
13 because our Order -

14 MS. FORNEY: He's not suggesting mediation; I didn't  
15 hear that come up at all.

16 MR. LIVINGSTON: I didn't say anything about mediation,  
17 although you did, Mr. Halter, didn't you use that - what did you  
18 say?

19 MS. LATTIMORE: Hearing Officer.

20 MR. LIVINGSTON: Well, what does that mean?

21 MS. LATTIMORE: It's delegating our authority to one  
22 person to hear the evidence.

23 MR. LIVINGSTON: You can not do that legally, and we will  
24 not agree to that. And we will certainly not agree to comply with  
25 something that requires us to pay to waste time while the City in a

1 bind with all of its Unions who it's not negotiating with in all of  
2 the contracts that will be expired by February 20th. This is very  
3 important to the process, that the Labor Board do something. You  
4 have to do something definitive, and what you do definitive  
5 according to the law is you hold a hearing. The more public that  
6 hearing is the better, and that's where the pressure comes for the  
7 City. If you hold the hearing in a back room, and you don't write  
8 a report to the Mayor and you don't make it public, then the City  
9 gets the delay and the stalling that it wants, and the Labor Board  
10 gets nothing because you are ineffective. The last Board said, we  
11 will give you the right to go to Court with our Order. That's what  
12 - do you want me to read it again?

13 MS. FORNEY: No, Paul, I don't.

14 MR. LIVINGSTON: Then why are you moaning about it, if  
15 that's what it says, it says, "we'll give you an Order, take it to  
16 court and get it enforced, because we're not going to go through  
17 the Mayor, and ask him if it's okay for him to be deposed, since he  
18 said he will absolutely not follow the orders of the Board."

19 MS. FORNEY: And you didn't get it enforced. That's  
20 the bottom line. Now, I've been also told that the -

21 MR. LIVINGSTON: That's a joke.

22 MS. FORNEY: - several of the other Unions are going  
23 to move to intervene in this because they don't want the  
24 Transportation Union requesting information as to their  
25 negotiations.

1 MR. LIVINGSTON: Who's told you that?

2 MS. FORNEY: Mr. Mowrer told me that on behalf of the  
3 APOA, and -

4 MR. LIVINGSTON: Well then that needs to happen, if  
5 they're going to intervene. Are they going to intervene for the  
6 purpose of having a say in how collective bargaining is conducted  
7 with the City?

8 MS. FORNEY: I suggest you call up Mr. Mowrer and ask  
9 him.

10 MR. LIVINGSTON: Or just for the purpose of stopping us  
11 from getting records?

12 MS. FORNEY: We will go on record as wanting - as  
13 thinking that a hearing officer is something completely within your  
14 power, and we will completely and totally support that as being a  
15 way to get this resolved.

16 MR. HALTER: I would move that we direct this case to  
17 a hearing officer, or you can select a hearing officer. They can  
18 mutually agree; they can exchange things with people, if they  
19 cannot come to an agreement by that means, there is the American  
20 Arbitration Association, there's Federal Mediation and Conciliation  
21 Service, all of those - those two organizations can provide you the  
22 list of competent hearing officers based on parameters that you  
23 set, based on experience requirements or any other parameters that  
24 you want to include. The parties can share the cost for it; the  
25 hearing officer will make a written report with findings of fact

1 and a recommendation to this Board and then the Board will receive  
2 that and we will receive, entertain an oral response from each of  
3 the parties in response to the hearing officer report and then  
4 we'll make our decision based on that report, which could include  
5 adopting the report as a Board decision, or modifying it as we see  
6 fit. Is there a second to the Motion?

7 MR. LIVINGSTON: May I speak to that. May I speak to  
8 that, Mr. Halter? What you've done is you've said "we don't have a  
9 hearing process in the City of Albuquerque, we have a way of  
10 diverting you from the hearing which the Board is required to hold  
11 as a matter of law." The Board's orders are specific and they set  
12 out the time when you need to respond, and then you need to hold a  
13 hearing. You will leave us with no response other than the need  
14 and the obligation, on behalf of everyone, all the unions who need  
15 to have a Board, a Labor Board in place that deals with issues,  
16 rather than one that delegates them to some third parties. What we  
17 need to do then is go to court for a Petition for Mandamus ordering  
18 you to comply with the law. Now that's a very destructive process  
19 but it's what you're going to require us to do if, as it appears,  
20 Ms. Saine and you have decided to avoid, once again, the process of  
21 the Labor Board, which is to hold a hearing. (640) (25:50)

22 MS. LATTIMORE: Excuse me. I don't agree with my two  
23 partners here for different reasons. From what I can see, we are  
24 stuck in a loop, and the best case you would probably get is if the  
25 hearing officer heard it, and wrote a recommendation, and then we

1 approve the hearing officer's thing, we will end up writing  
2 something like you just quoted. That is my concern, and maybe I'm  
3 too cynical.

4 MR. LIVINGSTON: And we won't get a public hearing;  
5 there's no public hearing. There's a secret process, a closed  
6 process. There's a non-binding process, but it's not a process.  
7 It's nothing for the Unions. It's not -

8 MS. SAINÉ: But the hearing officer would be a  
9 public hearing.

10 MR. LIVINGSTON: When would it be a public hearing? How?

11 MS. SAINÉ: With the hearing officer.

12 MR. LIVINGSTON: I'm not sure where you're going to get  
13 rules, or a process, or anything else. What you're just sending us  
14 to is non-binding arbitration then. And that's not part of this  
15 process -

16 MS. SAINÉ: It's just like the Personnel Board does;  
17 they have a hearing officer, an independent hearing officer -

18 MR. LIVINGSTON: Yes, but they have that by Ordinance.  
19 It's in the Ordinance that they have a hearing officer, a means of  
20 selection, and they have some very serious problems with that too.  
21 So, it's not functioning at the moment, and that's a real problem,  
22 but if that's what you're going to do, you're saying the Labor  
23 Board is non-existent once again, and the City can gleefully say,  
24 "well, you didn't get anything enforced; you haven't enforced  
25 anything," and how long are we talking about? We're talking about

1 a Union that's been without a process or a package or anything  
2 else. There's no money on the table, for any of the unions. And if  
3 that's not a serious concern to the City of Albuquerque, then, Mr.  
4 Halter, I wonder what your function is as a Labor Board. Do you  
5 really have a function or are you just doing what the City or the  
6 Mayor could do, is refer it to a hearing officer?

7 MR. HALTER: Well, I think we've just laid out a  
8 process for you that will result in a binding Board decision and it  
9 will be much quicker than if we hear the case. We have just spent  
10 the last three or four Board meetings working our way through one  
11 case, as well as other matters on the agenda, and by the time we  
12 tackle the case that you want to present, it could be quite a while  
13 before we reach that point.

14 MR. LIVINGSTON: And this is a recent case, and you're a  
15 Board that hasn't dealt with '97, '96, '98 cases; you're a Board  
16 that has some serious problems in terms of getting things done, and  
17 you're telling us that the *faster* way to go is to a hearing  
18 officer. Now that's nonsense Mr. Halter.

19 UNIDENTIFIED VOICE: That's right.

20 MR. HALTER: Okay. Well anyway -

21 MS. LATTIMORE: My one question is, will the hearing  
22 officer just sign off on the City's refusals to either not supply  
23 the information requested, or interview, or have as a witness? I  
24 mean, if you're going to do this, you need some guidelines, so that  
25 it would be a fair process.

1                   MR. HALTER:           Well, I think the hearing officer could  
2 draw - if the hearing officer could draw an adverse inference -  
3 (717) (29:00)

4                   TAPE 2; Side B:

5                   - witness, or direct a hearing, or produce a document and if  
6 he wasn't, he or she wasn't persuaded by the reasons or arguments  
7 set forth. And I don't think that would be anything -

8                   MR. LIVINGSTON: - you to then decide. And that's  
9 supposed to save time? You decide and then we still don't have a  
10 hearing, as set out in the Ordinance. We still have no process,  
11 and neither do any of the other unions. In fact, I was told, by  
12 the representative of the Fire Union, John Garcia, I believe, he  
13 told me that a year and a half ago, they filed a Prohibited  
14 Practice case over the fact that they put in this new Guidelines  
15 Committee and City Council approval provisions, and that it hasn't  
16 been heard yet. You've got an issue, an issue, that we're trying  
17 to bring right before the appropriate place, by law, you are the  
18 Labor Board, did you understand that? Your decision is what is so  
19 important to everyone in the City of Albuquerque, and what you're  
20 saying is we can't make a decision because it will take too long  
21 for us to make a decision; we just spent four sessions dealing with  
22 Community Services. Well, I can assure you that if you do what the  
23 - this Labor Board, the one that Justin Pennington was on - they  
24 scheduled an evening meeting in the City Council Chambers, there  
25 were several hundred people present. There was a lot of debate and

1 discussion, and what came out of that was a promise by Paul Broome,  
2 who stood up and said, "we will have a decision for you in four or  
3 five days." That was on September 4, I believe, 1997 or 8, I can't  
4 remember which year, and in fact what happened was, there was no  
5 decision made. The process went to the end of September when the  
6 Labor Board expired once again, then. There was no Labor Board for  
7 about a half a year or a year, and then when the next Labor Board  
8 came in Councilor Lattimore was on it. They set up a hearing, but  
9 remember the is the same issue. We interviewed witnesses, we got  
10 to the hearing, we actually arrived at the day of the hearing  
11 expecting there to be some witnesses, and Cathy Martinez said, well  
12 she had discovered that the Mayor wasn't a City employee, you may  
13 remember this, Councilor Lattimore -

14 MS. LATTIMORE: It wasn't Cathy, it was Gina, I'm pretty  
15 sure.

16 MR. LIVINGSTON: - No, I think it was Cathy. Well, I  
17 think it was Cathy, and she got up and said they had discovered  
18 that the Mayor wasn't a City employee, therefore he couldn't be  
19 requested to appear as a witness. So we said, okay, we don't have  
20 the Mayor, we didn't have a number of people, but we'll go ahead  
21 with the hearing anyway, because we have some witnesses here and  
22 we're scheduled for a hearing and we'd been preparing for it for  
23 months, and then they said - Patrick Vigil made a motion and he  
24 said, well, the last Board heard this, and they made a decision so  
25 I'll just move that we not have a hearing but we'll go with the

1 last Board's decision. And then the Board made its written  
2 decision over Councilor Lattimore objections, very strong  
3 objections that they shouldn't have gotten us there with witnesses  
4 and everything else if they intended to not hear it then. And we  
5 had to take that to Court and we produced the transcript which I  
6 thought you'd read, Mr. Halter -

7 MR. HALTER: I have read it.

8 MR. LIVINGSTON: - it was attached to our Complaint and  
9 Judge Theresa Baca said this is an abuse of process, it's the lack  
10 of due process - Bruce Thompson argued that "no, it wasn't, because  
11 we don't really have to have a hearing," -

12 MS. LATTIMORE: But, excuse me, didn't the CAO testify  
13 at one of your cases, I mean, they're refusing now but I swear to  
14 God Lawrence Rael testified.

15 MR. LIVINGSTON: I think so. I think so. I think we  
16 never were able to get the Mayor to come but we got the CAO several  
17 times.

18 MS. LATTIMORE: No, the Mayor and the Director of  
19 Counsel Services refused -

20 MR. LIVINGSTON: So, we're going backwards, I mean we're  
21 going as fast as you can go backwards, and we have no alternative,  
22 based on what you said - announced to you that we will not  
23 cooperate with that process, it's wrong, it's designed to just put  
24 us aside and say we're meaningless, the Board is meaningless, the  
25 process is meaningless, and we think very strongly that the Courts

1 will uphold us this time, as they would have last time if we had  
2 gone to Court.

3 PAULA FORNEY: If you'd reduced, ha ha, the record to  
4 an Order, Mr. Livingston, rather than let it get *dismissed* for lack  
5 of prosecution.

6 MR. LIVINGSTON: Well, that's easy for you to say, and  
7 it's easy for your husband to laugh at us because he insisted on  
8 taking an appeal to the Court of Appeals which in a labor  
9 situation, when you get a City that's determined to do everything  
10 it can to stall and to not give you a hearing, yes, they can do it.  
11 And this is a small Union, and no we didn't get it reduced to an  
12 Order but we will this time.

13 MS. SAINÉ: And then you're saying you're not going  
14 to comply with this.

15 MR. LIVINGSTON: No, we can't possibly do that; we can't  
16 agree to that. It's an insult to the Union, it's an insult to all  
17 the unions to say that our process is such that the Labor Board,  
18 which is the only City Board we have to do this, to hear a case,  
19 and to give it a public hearing, because, you know, as soon as the  
20 City hears that something is in the newspaper, as soon as there is  
21 a reporter or a television camera involved, boy that process speeds  
22 up tremendously, Mr. Halter, you'd be surprised how fast it will go  
23 once there's some publicity about it, and once it's realized there  
24 are seven unions that don't have contracts and don't have a process  
25 in place because the Labor Board doesn't have the courage to say

1 it's our job to hear and to decide what the process should be.

2 MS. FORNEY: It has nothing to do with 97-18.

3 MR. LIVINGSTON: Well, thank you for your comment. They  
4 agreed to consolidate 97-18, now she's saying it has nothing to do  
5 with it.

6 MR. HALTER: We have a motion, and we have a second  
7 on the record for it, and Cathy, would you call a vote, the Board's  
8 roll on this motion so we can have it clear.

9 MS. MARTINEZ: Uh, Chairman Halter?

10 MR. HALTER: Aye. So I vote in favor of the Motion.

11 MS. SAINE: And I second it.

12 MS. MARTINEZ: Approved two to one?

13 MS. LATTIMORE: Yes, I'm a "nay."

14 MR. HALTER: Um, at this time I would - (075) (35:00)

15 MS. LATTIMORE: And would you please proceed with the  
16 talking to people, the two of you, hopefully can get together and -  
17 no -

18 MR. LIVINGSTON: No. No, we cannot. There's no way to  
19 go except to Court with this.

20 MR. HALTER: At this time I would move that the Board  
21 move into closed session on the -

22 MS. LATTIMORE: Can we have a brief break, first?

23 MR. HALTER: We'll go into closed session first and  
24 then we can take our break in conjunction with that. We'll move  
25 into closed session to deliberate over the administrative

1 adjudicatory proceeding that we've heard in case number LB-03- I  
2 believe it was -09, and is there a second for that motion?

3