

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

No. CV 2003-02215

NEW MEXICO TRANSPORTATION UNION,
ROBERT GUTIERREZ, Chairman,
and
BUS and VAN DRIVERS IN THE NMTU
BARGAINING UNIT

Plaintiffs,

vs.

CITY OF ALBUQUERQUE, MARTIN CHAVEZ,
Mayor, JAMES LEWIS, Chief Administrative Officer,
PETER BEHRMAN, Transit Department Director,

Defendants.

DEFENDANT CITY OF ALBUQUERQUE'S FIRST SUPPLEMENTAL
RESPONSES TO PLAINTIFFS' REQUESTS FOR PRODUCTION

Defendant City of Albuquerque, through Assistant City Attorney Paula I. Forney
responds to plaintiffs' requests for production as follows:

REQUEST NO. 1. Records, including any audit or other reports, memoranda,
or correspondence unrelated to any specific case, concerning or containing
information about the hearing or presentation of disciplinary grievances to the City
Personnel Board, the provision of annual performance evaluations, or referrals to the
City's Mediation Coordinator since January 1, 1998.

RESPONSE: See attached Personnel Board Log for years 1998 through 2005,
bates no. 000145 - 000159 and Audit Report No. 01-125. The Mediation Program
does not keep a listing of referrals and does not keep records beyond three fiscal years.
There are approximately 600 files currently maintained by the mediation coordinator.

Upon a production of a list of names, the City's Mediation Program can indicate if an individual from the list was referred for mediation. The ADR Division can also state whether or not mediation occurred. All other information is confidential.

REQUEST NO. 2. Records of any policy, rule, regulation, ordinance, or administrative instruction concerning Merit System Ordinance and/or the City's civil service system of personnel management.

RESPONSE: Defendant City objects to this request because plaintiff is not clear as to what they mean by "records". Without waiving this objection, Defendant City is producing the merit system ordinance, the December 1, 1990 and current version of the personnel rules and regulations and administrative instructions relating to personnel issues.

REQUEST NO. 3. Memoranda, correspondence, e-mail, and other communications concerning the appointment, selection, service, and replacement of any members of the City Personnel Board.

RESPONSE: See attached correspondence and e-mails, Bates no. 000101 - 000144.

REQUEST NO. 4. Records concerning the termination, lay-off, demotion, or suspension for more than five days of any Transit Department employees since January 1, 1998.

RESPONSE: The Transit Department only has records dating back to 2001. Previous records were sent to archives and consist of approximately 52 boxes. The remaining documents are available at Transit offices. The files of terminated

employees will be available Monday, August 8, 2005, at the Alvarado Center for review. The files of the other employees are available Friday, August 5, 2005 at the Legal Department for review. See also Answer to Interrogatory No. 9.

REQUEST NO. 5. Notes, reports, and other records of any inquiry or investigation into the provision or failure to provide annual performance evaluations since January 1, 1995.

RESPONSE: After a diligent search, records to respond to this request could not be located. If any are located, this request will be supplemented. See response to interrogatory no. 10.

No investigation was conducted. The City is aware that at some point, departments stopped performing evaluations and steps were taken to reinstitute them in response to the writ of mandamus. See response to interrogatory no. 3.

REQUEST NO. 6. Records of any complaint, claim, charge, or litigation, settlement, or other resolution of any case since January 1, 1995, concerning any charges or claims relating to the City's failure to provide or maintain a "merit system" of personnel management.

RESPONSE: The following court cases involved these issues:

David Alderete v. City, CIV-01-0997 Wj/WWD
Tom Castillo v. City, CIV-00-1305 JP/WWD
21 Solid Waste v. City, CV-01-0765

The court files are public record and should be in the possession of Plaintiff's attorney as he was the attorney of record on the cases.

REQUEST NO. 7. Records, including recordings and transcripts (in digital format if available) of any hearing, deposition, witness statement, etc. in which any issue concerning any aspect of the maintenance of a “merit system” of personnel management was at issue.

RESPONSE: See Response to Request No. 6.

REQUEST NO. 8. Notes, research results, letters, memos, and legal opinions concerning performance evaluations and mediation referrals of disciplined City Transit Department employees since January 1, 1998.

RESPONSE: Objection. Statements of opinion regarding personnel are protected from production under the Public Records Act.

Upon a production of a list of names, the City’s Mediation Program can indicate if an individual from the list was referred for mediation. The ADR Division can also state whether or not mediation occurred. All other information is confidential.

After a diligent search, records to respond to this request could not be located. If any are located, this request will be supplemented.

It is impossible to know which personnel files, if any, contain this information without going through each of the approximately 500 Transit Department employees’ files.

REQUEST NO. 9. Records concerning any attempts, efforts, or actions taken to hire or appoint a person to administer the City’s merit system and/or the Merit System Ordinance.

RESPONSE: The City’s Chief Administration Officer (CAO) is appointed by the

Mayor to administer the City's Merit system. There are no records.

REQUEST NO. 10. Records of any communications, correspondence, memoranda, guidelines, or other documents concerning the City's Mediation program for disciplinary cases involving suspensions for more than five days, demotions, or terminations.

RESPONSE: The mediation program is not normally involved in disciplinary cases involving suspensions for more than five days, demotions, or terminations. Upon a production of a list of names, the City's Mediation Program can indicate if an individual from the list was referred for mediation. The ADR Division can also state whether or not mediation occurred. All other information is confidential.

REQUEST NO. 11. Records concerning the selection, hiring, and contracting of Personnel Hearing Officers since January 1, 1998.

RESPONSE: Attached is listing of hearing officer contracts, Bates no. 000160 - 000166. Plaintiff may review request for proposal records and specific contracts by making an appointment with Terry Armstrong, paralegal to Paula I. Forney, at 768-4568, to arrange for a mutually agreeable time and date for review and copying. Documents concerning the process followed will also be produced.

REQUEST NO. 12. Records of referrals to the Mediation Coordinator for any Transit Department employee suspended for more than five days, demoted, or terminated at any time since January 1, 1998.

RESPONSE: Upon a production of a list of names, the City's Mediation Program can indicate if an individual from the list was referred for mediation. The

ADR Division can also state whether or not mediation occurred. All other information is confidential.

In accordance with the City of Albuquerque's Retention Policy Employee mediation files are retained for three fiscal years (NMAC 1.19.8.116). Records prior to January 1, 2001 have been destroyed in accordance with the City of Albuquerque's Retention Schedule. 2001 records are scheduled for destruction in December 2005. FY 2002 records will be destroyed in accordance with the Retention Schedule.

REQUEST NO. 13. Annual or other reports of the Personnel Board to the City Council or any other administrative body or officer.

RESPONSE: The Personnel Board does not prepare annual or other reports.

REQUEST NO. 14. Records, including correspondence and memos, to or from the City Personnel Board and/or any of its members or Chairpersons and any Chief Administrative Officer, Mayor, or other administrative official or body concerning any aspect of administration and management of the merit system and/or City personnel management.

RESPONSE: Such correspondence is generally found in files pertaining to individual cases if it exists at all. Other correspondence the City has found will be provided to Plaintiff's counsel, in addition to what he already possesses.

REQUEST NO. 15. Any records or documents that support or provide evidence concerning any answers to the interrogatories propounded to the City or to its Chief Administrative Officer.

RESPONSE: See all documents attached to these requests for production and

interrogatories to City of Albuquerque and James Lewis.

REQUEST NO. 16. Records concerning or demonstrating compliance with or violations of the City and/or State Open Meeting Acts by the Personnel Board and its members.

RESPONSE: The documents being produced, including the agendas and notices, are responsive to this request. Moreover, the City is not subject to state law on this matter.

REQUEST NO. 17. Any legal or financial opinion of the City Attorney or any Assistant City Attorney, consultant, or contractor concerning any of the claims and allegations in this case.

RESPONSE: Objection. Defendant City objects to this request as being over burdensome, unclear and unlimited in time as well as protected by the attorney/client privilege and as attorney work product. After a diligent search, records to respond to this request could not be located. If any are located, this request will be supplemented.

REQUEST NO. 18. Records of any exhibits and records supporting any records and exhibits which may be introduced as exhibits at the trial of this case.

RESPONSE: Defendant objects to this interrogatory. A decision has not yet been made concerning trial exhibits, but will be disclosed in accordance with the court's scheduling order. See answer to interrogatory 23.

Respectfully submitted,

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