

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO**

No. CV-2003-2215

ENDORSED
FILED IN MY OFFICE THIS

OCT 10 2007

Janita M. Duran
CLERK DISTRICT COURT

NEW MEXICO TRANSPORTATION UNION, et al.,

Plaintiffs,

vs.

CITY OF ALBUQUERQUE, et al.,

Defendants,

**MOTION TO ENFORCE SETTLEMENT AGREEMENT
AND COURT ORDER ON MERIT SYSTEM ISSUES**

Plaintiff New Mexico Transportation Union (NMTU) and Transit Department employees in the bargaining unit represented by the NMTU hereby move to enforce the Settlement Agreement entered into between Plaintiffs and the City of Albuquerque which was filed on September 12, 2005, and the Court's Order filed on September 6, 2005, stating as grounds therefore:

1. **Plaintiffs** are the **New Mexico Transportation Union (NMTU)**; the Chairman of the NMTU; and **City of Albuquerque Transit Department Bus and Van Drivers** in the NMTU bargaining unit.
2. Defendants are the **City of Albuquerque**; its Mayor, **Martin Chavez**; and the City's Chief Administrative Officer and Transit Department Director.

3. On September 6, 2005, the Court entered a Stipulated Order requiring the “staggered terms of Personnel Board members will be implemented as required by the Merit System Ordinance starting on September 1, 2006, so that one City representative and one employee representative will be newly appointed or reappointed or elected or reelected each year.” The Court also ordered that “no member of the Personnel Board shall serve more than two consecutive terms” and that “each September the four Board members shall meet in public to choose a fifth member who shall be the Board’s chairperson.”

4. On September 12, 2005, the parties filed a Settlement Agreement and the case was dismissed.

5. In the Settlement Agreement the City agreed to 1) comply with the Merit System Ordinance’s requirement of at least annual performance evaluations for classified employees; 2) engage in mediation in good faith and subject to certain conditions; 3) maintain a Personnel Board whose members have staggered terms and select a Chairperson each September; 4) address the Personnel Hearing Officer selection process and employ Personnel Hearing Officers under two-year contracts precluding any Hearing Officer from being “retained beyond a two-year term without being subject to a new selection process;” and 5) “commit the necessary resources and personnel to ensure that the Merit System functions without compromise or violation of the applicable ordinances, rules, and policies.”

6. To the date of filing this Motion, no election or reappointment of any Personnel Board member has been held or performed this year; the present members of the Personnel Board, including the Chairman, are continuing to serve beyond their two-year terms without an election or re-appointment; at least three of the five Board members have completed two consecutive two-year terms; and there has not been any September selection of a Board chairperson.

7. The last election of an employee representative was not held at the correct time and was marked by irregularities that resulted in denial of the due process rights of City employees to elect a representative of their choosing.

8. Despite its promise to do so, the City has failed to address the hearing officer selection process with Plaintiffs and despite the expiration of Personnel Hearing Officer two-year contracts no bid and selection process has taken place and the old hearing officers are continuing to serve beyond the dates of their contracts.

9. Many or most City Departments have not instituted a legitimate performance evaluation system and have not conducted at least annual performance evaluations as required by the City's Merit System Ordinance.

10. The City has failed to comply with provisions one (annual performance evaluations), three (Personnel Board members and terms), four (Personnel Hearing Officers), and five (necessary resources and personnel).

11. The City has breached its Settlement Agreement with the Union and has violated the Court's Order.

12. The City's violations of the Settlement Agreement, the Court's Order, and the City's own rules and ordinances are deliberate, willful, and in bad faith.

13. As a specific provision in the Settlement Agreement the Court retained jurisdiction to enforce the Settlement Agreement.

14. Plaintiffs have contacted the City's attorneys and they oppose this motion.

WHEREFORE, the NMTU and Transit employees request the following relief:

A. Hold an expedited hearing, reopen the case, reinstate the Amended Complaint and allow leave to supplement and update the Amended Complaint with a second amended complaint.

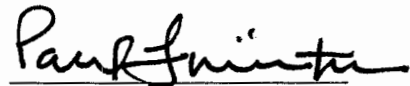
B. Enforce the prior Settlement Agreement and the Court's Order by compelling compliance with the Settlement Agreement and the Court's Order; issue a Writ of Mandamus, injunction, or other appropriate Order and set penalties for continued failure(s) to comply with such order(s).

C. Enjoin the City from taking or proceeding with any disciplinary actions in the absence of a validly constituted Personnel Board and validly appointed Personnel Hearing Officers, and apply such other terms, provisions, and requirements as the Court may deem appropriate to ensure that the due process rights of City employees are respected.

D. Require the City to pay Plaintiffs' attorney's fees and costs of this action as sanctions for non-compliance with the Settlement Agreement and Court's Order.

E. Award such exemplary damages and such other and further and other relief as the Court deems just.

Respectfully submitted,



Paul Livingston
Attorney for Plaintiffs
P.O. Box 250
Placitas, NM 87043
(505) 771-4000

I hereby certify that I faxed and/or e-mailed the foregoing motion to Assistant City Attorneys Michael I. Garcia and Robert Kidd on October 10, 2007.



Paul Livingston

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

No. CV-2003-2215

NEW MEXICO TRANSPORTATION UNION, et al.,

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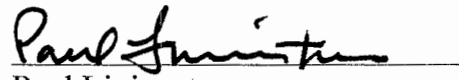
vs.

CITY OF ALBUQUERQUE, et al.,


Defendants,

REQUEST FOR EXPEDITED HEARING

1. Assigned Judge: Hon. Geraldine Rivera
2. Type of Case: Compliance with City Ordinance and Due Process
3. Jury: Non-jury: xxx
4. Dates of any hearings presently set: None
5. Matter to be heard upon this request: Motion to Enforce Settlement Agreement and Court Order on Merit System Issues
6. Estimated total time required: 45 minutes
7. Attach separate sheet listing name, firm, capacity, address and telephone number of all parties entitled to notice.


Paul Livingston
P.O. Box 250
Placitas, N.M. 87043
(505) 771-4000

I hereby certify that I faxed a copy
of the foregoing to Assistant City Attorneys
Michael I. Garcia and Robert Kidd on October 10, 2007


Paul Livingston

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