

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

Case No. CV-2004-04508

**CHAUFFEURS, TEAMSTERS AND HELPERS,
LOCAL UNION 492,**

Plaintiff,

vs.

**THE CITY OF ALBUQUERQUE,
MAYOR MARTIN CHAVEZ,
MEMBERS OF THE CITY LABOR BOARD,
PATRICK HALTER,
DEBORAH LATTIMORE, and
DEBRA SAINE,**

Defendants,

and

**NEW MEXICO TRANSPORTATION UNION,
ROBERT GUTIERREZ, Chairman,**

Interveners-Defendants.

RESPONSE IN INTERVENTION

Interveners, **New Mexico Transportation Union**, and **Robert C. Gutierrez**,
Chairman, present the following Response to the Teamsters Union's Amended Complaint
for Temporary Restraining Order, Permanent Injunction, Damages, Attorney Fees and
Court Fees:

1. The jurisdictional allegation in paragraph one is denied.

2. Interveners are without sufficient knowledge to admit or deny the truth of the allegations in paragraph two.

3. Interveners admit that there is a City Labor-Management Relations Ordinance, but deny any further implications of the allegations in paragraph three.

4. The fourth paragraph of the Amended Complaint contains four sentences. The allegation in the first sentence is admitted; the second sentence is unintelligible and is therefore denied; the third sentence is denied; and the fourth sentence is denied.

5. The fifth paragraph of the Amended Complaint contains four sentences; except for the third sentence, which is denied, the correspondence referred to speaks for itself and is not amenable to either admissions or denials.

6. The sixth (unnumbered) paragraph of the Amended Complaint contains ten sentences, each setting forth different contentions referring to correspondence with the City. The documents referred to in paragraph six speak for themselves, and Interveners are without sufficient knowledge, ability, or inclination to either admit or deny the Teamsters Union's narrative.

7. The seventh paragraph of the Amended Complaint refers to a decision of the City Labor-Management Relations Board which speaks for itself. The last sentence of paragraph seven alleges that the Labor Board's decision "is invalid" in five respects.

Interveners deny each and every one of the five contentions.

AFFIRMATIVE DEFENSES

A. Plaintiff has failed to comply with Rules 1-008 and 1-010 of the Rules of Civil Procedure with respect to the form and content of the pleadings;

B. Plaintiff has failed to appeal the decision of the City's Labor Board in accordance with Rule 1-074, N.M.R.Civ. Proc. and is therefore barred from collateral attacks on that decision.

C. Plaintiff has failed to comply with Rule 1-066 with respect to its application for a restraining order and for injunctive relief. In particular Plaintiff has failed to post security in accordance with the provisions of Rule 1-066 and has failed to allege "irreparable harm" if the injunctive requests are denied.

D. Plaintiff has unclean hands and cannot properly apply for injunctive relief.

E. Plaintiff has failed to assert any basis, grounds, or statutory entitlement to any claim for damages, costs, or attorneys' fees.

F. Plaintiff has failed to properly serve either the Complaint or the Amended Complaint on the City Defendants.

G. Plaintiff has failed to join necessary parties, i.e., Moises Ortega or the New Mexico Transportation Union.

H. Plaintiff lacks standing to bring the claims in the Amended Complaint.

I. Plaintiff has failed to assert any appeal of the decision of the City Labor Board within the time allowed by the statute of limitations and is therefore barred from filing any such claim or appeal.

J. Plaintiff's Complaint is barred by the Contract Bar Rule.

K. Plaintiff's claims are precluded by the doctrines of res judicata and/or collateral estoppel.

L. Plaintiff fails to state a claim for relief as a matter of law.

Wherefore, Interveners pray for the dismissal of the Teamsters Union's Amended Complaint, for the award of their costs and attorneys' fees, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

Paul Livingston
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