

**BEFORE THE CITY OF ALBUQUERQUE  
LABOR MANAGEMENT RELATIONS BOARD**

IN THE MATTER OF UNFAIR and PROHIBITED  
PRACTICE COMPLAINT: New Mexico Transportation Union,  
(Substance Abuse Policy); AFSCME LOCALS 624, 1888,  
2962, and 3022 (Intervenors),  
Complainants

v.

CITY of ALBUQUERQUE,  
Respondent.

**DECISION and ORDER**

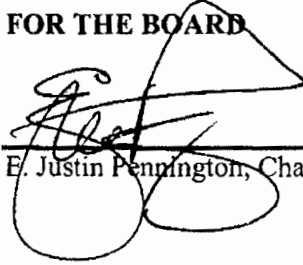
This matter came before the Board for a hearing on the merits on October 10, 2006; November 14, 2006; January 10, 2007; and February 7, 2007. After the close of evidence and the submission of Requested Findings and Conclusions, the Board deliberated on May 21, 2007, and found and concluded as follows:

1. City had a duty to negotiate changes to the provisions of its Substance Abuse policy before implementing such changes.
2. Negotiations did not occur.
3. The interests of orderly collective bargaining and industrial peace would be promoted by ordering that negotiations take place.
4. The status quo should be maintained while negotiations proceed.

**EXHIBIT 1**

**IT IS THEREFORE ORDERED:**

1. The parties shall negotiate the terms and conditions affected by changes to City's Substance Abuse Policy Manual.
2. The status quo shall be maintained during negotiations.
3. The parties shall conclude negotiations on or before June 18, 2007, and shall report the results of negotiations to the Board at its meeting scheduled for that date.
4. The Board retains jurisdiction to order such further and additional relief as may be appropriate following negotiations.

**FOR THE BOARD**

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E. Justin Pennington, Chair

**PAUL LIVINGSTON**  
ATTORNEY  
Post Office Box 250  
Placitas, New Mexico 87043

Tel (505)771-4000

Fax (505) 771-2333

June 14, 2007

By Fax to 768-3938

Mr. Lawrence Torres  
Employee Relations Director  
City of Albuquerque  
Albuquerque, New Mexico

Re: Drug Testing Policy Negotiations

Dear Mr. Torres:

On Tuesday, June 12, 2007, Fred Garcia and I met with you and Paul Broome at your invitation for the first (and only) negotiation meeting pursuant to the City Labor Board's undated Order that "(t)he parties shall negotiate the terms and conditions affected by changes to the City's Substance Abuse Policy Manual." I believe we have at least agreed that the most significant of those changes was the change from a "second chance" policy to a "zero tolerance" policy.

You advised us that the City would not consider or negotiate making any change to the "zero tolerance" policy. You did, however, suggest the possibility of establishing a mini-Employee Assistance Program within the NMTU, similar to what you have told us the Firefighters union has. You asked for our response concerning such a program, which as we understand it, would not alter the City's "zero tolerance" drug testing policy in any way. Our response, after careful consideration, is that a mini-EAP would for the Transit Union, impose significant burdens on the Union without any corresponding benefit for our employees.

In reviewing the recording of the Labor Board meeting I heard that the Board had ordered that good faith negotiations be held, that they not be limited to just one session, and that the issues should be fully explored. Accordingly, I was surprised to learn that no meetings took place with any of the unions until June 12, the same day we met with you, and that apparently the one meeting we had is all the City intends to have prior to reporting back to the Labor Board on Monday, June 18.

Just so it is clear, the NMTU earnestly wants and needs to negotiate a reasonable drug testing program, and is doing everything it can to comply with the Labor Board's Order. We are prepared and anxious to discuss a variety of options, such as having lesser penalties for marijuana than for some of the other drugs, and accordingly treating some offenses differently or on a case by case basis. On the other hand, the City appears to be refusing to negotiate any changes to its present policy. We have also requested that the City provide us with information concerning what, if anything, was wrong with the second chance policy, and how the City statistically supports its contention that zero tolerance is somehow more effective than allowing troubled employees a second chance.

**EXHIBIT 2**

Since you do not appear to be contemplating any further meetings or negotiations beyond the one held on Tuesday, we expect to advise the Labor Board that the City is not interested in negotiating drug testing policy in accordance with the Board's Order. Please advise us if you have any contrary suggestion or position.

Thank you for your consideration of these matters.

Yours very truly,

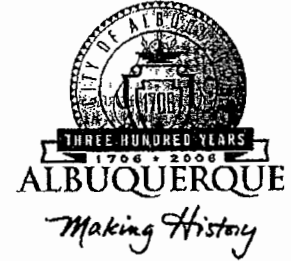
A handwritten signature in cursive script that reads "Paul Livingston".

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Paul Livingston  
Attorney for NMTU

Copy: Fred Garcia (by fax)

# CITY OF ALBUQUERQUE



## Office of Employee Relations

July 18, 2007

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RETURN RECEIPT REQUESTED

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Gentlemen:

**Re: SUBSTANCE ABUSE NEGOTIATIONS  
CITY'S LAST BEST AND FINAL OFFER  
JULY 17, 2007**

On July 9, 2007, Mr. Paul Broome, representing the Employee Relations Office, met with representatives from AFSCME Locals 2962 and 3022 to negotiate proposed changes in the City's Substance Abuse Policy. This was the third negotiating session conducted by the City with these unions on the Policy. The New Mexico Transportation Union (NMTU) was contacted and asked to attend, but the representatives could not meet at that time.

At the meeting the unions presented two proposals. The first proposal requested a copy of the original City Council Resolution ordering the creation of a substance abuse policy. The unions stated this resolution may have conflicted in some manner with the City's current Substance Abuse Policy. The Employee Relations Office immediately secured a copy of the resolution. The unions examined the resolution, and nothing more was said about this issue.

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The second proposal from the unions asked the City to implement an "impairment test." Specifically, the unions proposed the following language be added after the second sentence in Section H of the Policy: "Prior to testing of all covered employees, will (sic) be subject to an impairment test. If employee fails impairment (sic) test, the employee will submit to a breath alcohol/urine test. If employee (sic) passes impairment test the employee will be given the opportunity to self refer or submit to a breath alcohol/urine test."

Mr. Broome and the union representatives engaged in a lengthy discussion of this proposal. At the conclusion of the meeting, Mr. Broome promised the unions he would carry the proposal to Mr. Lawrence Torres, Employee Relations Director, the Legal Department and the Risk Management Division. In good faith, Mr. Broome met with Mr. Torres and representatives from the Legal Department and Risk Management on the following day, July 10, to discuss the proposal.

Although the City recognizes the unions' proposal as a good faith effort to resolve these negotiations, the "impairment test" proposal must be rejected for the following reasons:

1. Most employees ordered to take a breath alcohol or urine test will test negative on the impairment test but also know that they would probably test positive on the City's breath alcohol or urine test and would self refer.
2. The integrity and basic purpose of the self-referral procedure would be destroyed by this process. The City contends that its proposal related to self-referral more effectively addresses the needs of the employees while maintaining the integrity of the self-referral principle. (see below)
3. The statements by the unions at the July 9 meeting confirm that the "impairment test" probably has a threshold for "impairment" that is less than the "screening/confirmation cut-offs" contained in the Policy. Therefore, two completely different thresholds would be used.
4. The "screening/confirmation cut-offs" contained in the Policy have been established by the Federal Government and are not subject to modification.
5. The City would be obligated to pay the cost of the impairment test plus the cost of the equipment needed to conduct the test.

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The City, therefore, is hereby submitting its last, best and final offer on this matter. The City proposes the unions accept the City's June 26, 2007 proposal which reads as follows:

"The City proposes that the Substance Abuse Policy negotiations be resolved and concluded by the acceptance of the following proposed initiatives:

1. **Union EAP:** The unions shall establish an Employee Assistance Program (EAP) to serve employees with substance abuse problems. The City will assist the unions with the development of this program through in-kind services such as Employee Benefits, Employee Health Services, Risk Management and Employee Assistance Program consultation and assistance.
2. **Self-Referrals:** The City proposes that the new Substance Abuse Policy's self-referral procedures be examined and explained to the parties by Risk Management. The City will be prepared to consider any Union proposed change to this policy section that improves the policy.
3. **Post-Accident:** The City proposes that the new Substance Abuse Policy's Post-Accident procedures be examined and explained to the parties by Risk Management. The City will be prepared to consider any Union proposed change to this policy section that improves the policy.
4. **Training:** The City will provide training for Union stewards during the work day on the following topics:
  - a. Reasonable suspicion recognition and intervention skills
  - b. Social and economic impact of substance abuse"

At the June 26 meeting, the City expanded its offer as follows:

1. Under #1, Union EAP, the City stated the Union's EAP would need to be consistent with the City's Substance Abuse Policy.
2. Under #2, Self-Referrals, the City agreed to amend this section of the current Policy to provide an employee the right to a second positive test

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during the ninety (90) day self-referral process prior to termination of employment.

3. Under #3, Post-Accident, the City agreed to amend this section to recognize that a vehicle breakdown that resulted in vehicular damage but is not the result of an employee accident shall not warrant breath alcohol/urine tests. Although the City already practices this policy, the current language does not specifically address the issue.

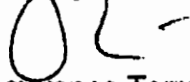
The four (4) proposals made by the City at the June 26 meeting and the three (3) subsequent modifications cited above represent the City's last, best and final offer. Provisions of the current policy that are not modified by this last, best and final offer would remain in effect as written.

The AFSCME unions, on June 26, accepted these proposals. NMTU did not and did not participate in the meeting. Nonetheless, the City is proposing that the benefits offered and agreements reached with the AFSCME unions also should apply to employees in the NMTU bargaining unit. The Employee Relations Office, the Risk Management Division and the Legal Department are prepared to submit this offer in good faith for approval to the City's Chief Administrative Officer.

The City respectfully requests a response to this last, best and final offer from the unions **no later than the close of business on July 23, 2007**. If the City does not receive a response from the unions, the City will exercise its rights under the Labor-Management Relations Ordinance including, but not necessarily limited to, the declaration that an impasse exists in these negotiations. The City will then be prepared to comply with the Ordinance's Impasse Resolution Procedure.

Thank you for your consideration. I look forward to hearing from you.

Very truly yours,



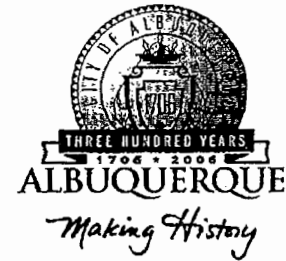
Mr. Lawrence Torres  
Employee Relations Director

xc: Ms. Paula Forney  
Mr. Charles Kolberg  
Mr. Paul Broome

# CITY OF ALBUQUERQUE

*Office of Employee Relations*

July 27, 2007



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Gentlemen:

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On July 23, this office received a response from AFSCME Locals 624, 3022 and 2962 to my July 18 letter that incorporated the City's last, best and final offer on issues related to the City's Substance Abuse Policy and the City's Labor-Management Relations Board decision that addressed the City's duty to bargain these issues. I did not receive a response from the New Mexico Transportation Union.

I have shared your July 23 response with Mr. Paul Broome, the City's Chief Administrative Officer and representatives from the City's Legal Department and Risk Management Division. With the exception of the additional information on page 1, sub-paragraph 1 of the Unions' response, each of the clarification points made in the letter had been communicated by Mr. Broome to me after his July 9 meeting with the AFSCME Unions. The sub-paragraph 1 clarification addressing the Union's proposal to impose an immediate twenty (20) day suspension on an employee who is referred to the City's Substance Abuse program after the proposed "impairment test" was not included in the Unions' written proposal. The Unions' written proposal also did not describe the referral as "mandatory."

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My July 23 letter clearly stated the reasons the City is not prepared to accept the Unions' impairment test counter-proposal. The Unions' refusal to accept the City's last, best and final offer and your continued advocacy for the impairment test proposal clearly establishes that the parties have reached a state of impasse in these talks. Therefore, pursuant to Section 3-2-14 of the Labor-Management Relations Ordinance, the City is officially declaring impasse. The City will assume the responsibility of notifying the Federal Mediation and Conciliation Service (FMCS) that an impasse exists. The City will also request from FMCS the services of a mediator. The Ordinance allows the parties to agree on an alternative mediator. If the Unions wish to recommend a mediator other than a FMCS mediator, please contact me.

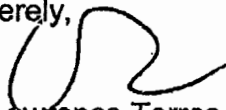
Consistent with the Labor Board's ruling on the City's rights after an impasse has been declared, the City will immediately implement all aspects of the Substance Abuse Policy **including the proposed changes in the policy that were outlined in my July 18 letter and accepted by the AFSCME Unions in writing on June 26.** Furthermore, the City will be prepared to continue talks on any outstanding issues. If the Unions can provide specific examples where an impairment test has been successfully implemented in a municipality, the City would like to examine and discuss these examples.

The Risk Management Division will begin the re-draft of the policy's administrative instruction to incorporate the changes cited above. These changes will also need to be presented to the SAPRAB. Be assured the proposed changes **will be shared with the Unions.** The Unions will also be provided the opportunity to discuss these proposed changes with this office.

The City appreciates the AFSCME Unions' good faith bargaining initiatives. Please contact me if you have any questions.

Thank you.

Sincerely,



Mr. Lawrence Torres  
Employee Relations Director

Xc: Dr. Bruce Perlman  
Ms. Paula Forney  
Mr. Charles Kolberg  
Mr. Paul Broome