

**BEFORE THE CITY OF ALBUQUERQUE'S  
LABOR-MANAGEMENT RELATIONS BOARD**

**NEW MEXICO TRANSPORTATION UNION  
and  
FRED GARCIA, Chairman,**

**Complainants,**

**vs.**

**CITY OF ALBUQUERQUE,**

**Respondent.**

**COMPLAINT OF UNFAIR AND PROHIBITED LABOR PRACTICES  
(DRUG TESTING PENALTY POLICY)**

The New Mexico Transportation Union and its Chairman, Fred Garcia, present the following Complaint of Unfair and Prohibited Labor Practices concerning the City's unilateral attempts to impose its zero-tolerance penalties for alleged drug testing violations without bargaining in good faith with the unions, stating as grounds therefore:

1. Complainants are the **New Mexico Transportation Union** (henceforth, the "**Union**"), an independent labor union that represents City of Albuquerque ABQ-Ride bus drivers and Mini-Ride van drivers, and **Fred Garcia**, the Union Chairman.
2. Respondent is the **City of Albuquerque, New Mexico**, a municipal corporation within the State of New Mexico.

3. In March, 2006, the City of Albuquerque and its Transit Department announced implementation of a new City drug testing policy, Administrative Instruction No. 7-1 Revised; dated February 7, 2006.

4. The new drug testing policy removed the “second chance” and suspension provisions of the City’s drug testing policy and replaced them with “zero-tolerance” and termination for a first offense.

5. On April 12, 2006, the Union filed a charge of prohibited and unfair labor practice, Labor Board Case No. 06-10, charging that the City had refused to engage in collective bargaining “concerning the penalty for failing or refusing to take a drug test, even though penalties for drug testing violations are a mandatory topic of collective bargaining negotiations” and charging that the City had unilaterally implemented a City Operators’ Permit policy without negotiating with the Union.

6. Although hearings were held on the drug testing portion of LB-06-10, no hearings have been held on the City Operators’ Permit portion of the case.

7. On May 21, 2007, after numerous hours of hearings on the drug testing penalty policy, the Labor Board issued an interim Decision and Order finding that the “City had a duty to negotiate changes to the provisions of its Substance Abuse policy before implementing such changes.” The Board ordered the parties to negotiate and “retain(ed) jurisdiction to order such further and additional relief as may be appropriate following negotiations.” **EXHIBIT 1**

8. The Labor Board has stayed the City from enforcing its zero-tolerance drug testing penalty policy pending the conclusion of the case before the Labor Board.

9. This issue had been the subject of two prior prohibited practice cases, LB-96-624 and LB-96-06, and both times the Labor Board ruled that drug testing policies are a mandatory topic of collective bargaining.

10. On June 12, 2007, the Union's attorney wrote to the Director of Employee Relations confirming and complaining that the "City would not consider or negotiate making any change to the 'zero-tolerance' policy" that was the subject of the NMTU charge of unfair and prohibited labor practices. See, **EXHIBIT 2**.

11. In its letter, the Union made a written request for information; the City provided no information. The Union requested good faith negotiations; the City refused "to negotiate any changes to its present policy." (Underlining in original). The City did not respond to the Union's June 12, 2007, letter.

12. On July 10, 2007, the Labor Board announced its final decision on the drug testing policy issues in Case No. LB-06-10,. The Labor Board again (for the third time) held that penalties for drug test policy violations are mandatory topics of collective bargaining and found that the City and the Union had not bargained over those penalties.

13. The Labor Board ruled that the City had a duty to bargain set out in Sections 3-2-2(A) and 3-2-7 of the City's Labor-Management Relations Ordinance (LMRO), that the City's failure to bargain over the drug testing penalties constituted an

unfair and prohibited labor practice, in violation of Section 3-2-9(A)(4) of the LMRO, and that the City's zero-tolerance drug testing policy was invalid and illegal.

14. Despite its verbal ruling on July 10, 2007, the Labor Board has not yet issued its written decision or findings and conclusions; nor has the Labor Board issued its written order deeming the zero-tolerance policy invalid or lifting the stay of enforcement of the drug testing policy.

15. After the City reiterated its refusal to consider any alteration of the zero-tolerance penalties, on July 18, 2007, the City presented to NMTU and two other union locals what it called its "Last Best and Final Offer July 17, 2007." According to the City's Employee Relations Director, the City had engaged in negotiations over drug testing and made proposals:

The AFSCME union, 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 should also 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.

**EXHIBIT 3**, attached. Neither the City's "proposals" nor its "offer" made any mention of any change, compromise, or negotiation over the zero-tolerance policy.

16. Although the NMTU has been advised about the AFSCME locals (Local 624 and 3022) alleged “acceptance” of City proposals, the NMTU is clearly not a party to those “negotiations” and does not know what “benefits (were) offered and agreements reached.” It is also unclear why, if the AFSCME locals “accepted these proposals,” those Unions would now be subjected to a “last, best, and final offer,” or impasse proceedings or why “the benefits offered and agreements reached with the AFSCME unions should also apply to employees in the NMTU bargaining unit.” What is apparent, however, is that the NMTU was not present and was not a party to the City’s “negotiations” with the AFSCME locals.

17. On July 27, the City’s Employee Relations Director wrote to the two AFSCME locals and the NMTU, claiming that:

The Unions’ refusal to accept the City’s last, best and final offer . . . 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. . . .

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.

**EXHIBIT 4**, attached; (emphasis in original)

18. Section 3-2-13 of the LMRO sets out “Negotiating Procedures” to be used for collective bargaining. None of the procedures set out in the Ordinance have been followed by either the City or the two local unions the City claims are engaging in collective bargaining with the City on the topic of drug testing penalties.

19. The City did not respond to the NMTU's request for information and has not made any offer, proposal, or suggestion to the NMTU that it was in any way willing to discuss altering the "zero-tolerance" drug testing penalties that are the subject of the Labor Board's ruling in LB-06-10.

20. There can be no "impasse" when there has been no collective bargaining.

21. Even if there has been collective bargaining, which in this case there has not, there can be no "impasse" when there has been no "good faith" bargaining.

22. Even if there have been collective bargaining negotiations, which there have not, and even if there have been "good faith" negotiations, which there have not, and even if there was a properly declared impasse, which there was not, nothing in the Labor-Management Relations Ordinance permits the City to unilaterally implement any policy or practice, particularly not a prohibited practice or a policy that was implemented in violation of the Union's right to collective bargaining such as the City's zero-tolerance drug penalty policy.

23. Nothing in the Labor-Management Relations Ordinance allows the City to implement a policy affecting working conditions under the false pretense of declaring impasse and presenting a "last, best, and final offer" when the City has refused to negotiate the policy, the policy is the subject of previous and presently pending prohibited practice complaints, and enforcement of the policy has been enjoined by the Labor Board.

24. The City's attempts to circumvent the LMRO, the present and past rulings of the Labor Board, and its duty to bargain over mandatory topics of collective bargaining in good faith by again arbitrarily implementing its zero-tolerance drug penalty policy are transparent, contemptuous, deceitful, and in bad faith.

25. The City's false declaration of "impasse," failure and refusal to bargain in good faith, and its bad faith attempts to again impose its zero-tolerance drug testing penalty policy without collectively bargaining over the policy, constitute unfair and prohibited labor practices.

**RELIEF REQUESTED:**

The Labor Board is requested to act in accordance with the Labor-Management Relations Ordinance to:

- a. Schedule a hearing to be conducted as soon as possible;
- b. Hear evidence and testimony of witnesses;
- c. Make findings and state conclusions of law holding that the City has committed unfair and prohibited labor practices;
- d. Report the City's arrogant, contemptuous, deceitful, bad faith misconduct in this matter;
- e. Prohibit enforcement of the City's zero-tolerance drug testing policy until such time as the City has engaged in real and good faith collective bargaining to resolve the issues and the parties have reached an agreement approved and ratified by the employees and the City;

f. Order such sanctions against the City for its misconduct and such relief for the employees and their Union as the facts and circumstances warrant;

g. Award the Union its costs and attorney's fees.

Respectfully submitted,

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Paul Livingston  
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I HEREBY CERTIFY that I faxed and/or e-mailed a copy of the foregoing to Bruce Perlman, Chief Administrative Officer; Jeanette Lovato at the Boards and Commissions Office; Lawrence Torres, City Employee Relations Officer, and Greg Payne, Director of the Transit Department, on August 1, 2007.

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Paul Livingston