

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

**ENDORSED  
FILED IN MY OFFICE THIS  
JUN 30 2008**

*Quantita M. Duran*  
CLERK DISTRICT COURT

LORENZO D. RENTERIA

**NEW MEXICO TRANSPORTATION UNION,  
FRED GARCIA, Chairman, ERIC AMES,  
JOHNNY GONZALES, CRYSTAL GRIEGO,  
and MARGIE SALAZAR, Members of the NMTU  
EXECUTIVE BOARD, and NMTU OFFICERS AND  
MEMBERS,**

CV 2008 0 6 5 7 6

**Plaintiffs,**

**vs.**

**CITY OF ALBUQUERQUE, NEW MEXICO,  
MARTIN CHAVEZ, Mayor of Albuquerque,  
CITY LABOR-MANAGEMENT RELATIONS BOARD,  
PAUL BROOME and LAWRENCE TORRES,**

**and,**

**AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
AFSCME, COUNCIL 18, ANDREW PADILLA,  
President of Council 18, and AFSCME,  
LOCAL 624, RON MEDINA, President.**

**Defendants.**

**COMPLAINT OF VIOLATIONS OF CONSTITUTIONAL,  
CONTRACTUAL AND STATUTORY RIGHTS**

Plaintiffs state the following claims for relief for violations of their statutory,  
constitutional, and contractual rights, stating as grounds therefore:

## **I. PARTIES**

1. Plaintiffs are the New Mexico Transportation Union (NMTU); Fred Garcia, Chairman; and the Executive Board, officers, and members of the NMTU.

2. Defendants are the City of Albuquerque, New Mexico; Martin Chavez, Mayor; the City Labor-Management Relations Board; Paul Broome, City labor negotiator; and Lawrence Torres, City Employee Relations Director (henceforth, collectively named “City Defendants”).

3. Also named as Defendants are the American Federation of State, County, and Municipal Employees (AFSCME), AFSCME, Council 18, Local 624, and their presiding officers (henceforth, collectively named “AFSCME Defendants”).

4. Although Plaintiffs have previously filed similar and related claims with the City’s Labor-Management Relations Board, the Defendant Labor Board has not, does not and can not provide any prompt, adequate, or effective remedy, making resort for relief to the Labor Board futile.

5. The NMTU is a representational organization operating under a Constitution adopted and ratified by its membership with an Executive Board and officers elected by the members.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

6. The present Collective Bargaining Agreement between the NMTU and the City of Albuquerque expires on June 30, 2008.

7. The City Defendants have persistently and repeatedly delayed and refused to hear or decide prohibited labor practice complaints brought by the NMTU Plaintiffs.

8. The City Defendants have refused to make findings and issue decisions in prohibited labor practice cases brought by the NMTU Plaintiffs.

9. The NMTU and the City entered into a successor collective bargaining agreement for July 1, 2008, to June 30, 2011. That agreement was ratified by the membership of the NMTU and was signed by the City and NMTU.

10. Rather than seeking decertification of the incumbent NMTU, which is authorized by provisions of the City's Labor-Management Relations Ordinance (LMRO) when an exclusive bargaining agent loses majority status, Defendants collusively sought and secured a "representational" election which was not permitted under the LMRO.

11. With knowledge and the assistance of City Defendants, including the City Labor Board, AFSCME Defendants solicited and secured signed membership cards from the Transit Department drivers, many of whom were already members of the NMTU.

12. On March 12, 2008, the City filed a "Request for Expedited Hearing" before the Labor Board and a "Request for Order Establishing Process for Election."

13. The City Defendants refused to hear or consider the NMTU's objections to the representational election.

14. At the time the City submitted its Motion to the Labor Board, Plaintiffs had the support of over 70% of the employees in the drivers' bargaining unit as demonstrated by its membership list and the deduction of NMTU membership dues by the City of Albuquerque.

15. Despite the City Defendants' prior refusals to hear or decide Plaintiffs' prohibited practice complaints, without consideration of the NMTU's petition and demonstration of majority support, and without any hearing of evidence and testimony, the City Defendants improperly sought, approved and scheduled a representational election.

16. Although the AFSCME membership cards included many employees who were already dues paying members of the NMTU, Defendants kept those membership cards secret and the Labor Board failed to hear or decide the NMTU's motion for disclosure of the AFSCME membership Cards.

17. On or around April 7, 2008, AFSCME representatives, including an "Interfaith Ministry" that is partially sponsored by AFSCME, falsely advised the City Council and others that the City was acting in collusion with the NMTU.

18. The AFSCME Defendants falsely claimed that the NMTU was an ineffective and incompetent "company union" which did not support its members or members of the Transit Department drivers' bargaining unit. City Defendants did not deny the false AFSCME claims.

19. Despite the pendency of a current collective bargaining agreement, Defendants have encouraged and allowed the "take over" of the NMTU's grievance and bargaining activities. On May 19, 2008, the City Defendants refused to continue a scheduled hearing on the grounds that NMTU lacks standing. The City Defendants have

also and similarly contended that the NMTU lacks standing to proceed with previously commenced litigation in the State district court.

20. City Employee Relations Director Lawrence Torres falsely informed the Labor Board that “the NMTU does not exist.”

21. Despite the ratified July 1, 2008 to June 30, 2011, contract Defendants are presently refusing to acknowledge or comply with that agreement.

22. Defendants are purporting to negotiate new contracts for the Transit drivers without acknowledgment of the existence of the NMTU, and are negotiating contracts with other bargaining units, even though the AFSCME Defendants represent less than a majority of the members in most or all of the bargaining units involved.

23. A majority of employees in the Transit Department drivers’ collective bargaining unit are presently members of the NMTU; none of the bargaining unit employees are dues-paying members of AFSCME, Local 624.

24. To this date, no AFSCME local union has been authorized or chartered to represent Transit Department drivers.

25. Despite their actual knowledge of the minority status of AFSCME locals and the absence of a dedicated Transit Department drivers local union other than the NMTU, Defendants are continuing to recognize and negotiate with AFSCME locals.

**WHEREFORE**, based on the foregoing factual allegations, Plaintiffs contend that Defendants have violated their rights and interests and seek remedies and relief in the following respects:

### **III. CAUSES OF ACTION**

#### **COUNT 1**

##### **VIOLATIONS OF DUE PROCESS**

26. Each of the preceding allegations is incorporated as if fully set out herein.

27. By their acts and omissions described herein Defendants have violated Plaintiffs' rights to due process and are liable for damages proximately caused by and resulting from those violations.

#### **COUNT 2**

##### **BREACH OF CONTRACT AND INTERFERENCE WITH CONTRACTUAL RIGHTS**

28. Each of the preceding allegations is incorporated as if fully set out herein.

29. By their acts and omissions described herein the City Defendants have breached their contracts with Plaintiffs and have violated the duty of good faith and fair dealing included in those contracts.

30. Defendants have intentionally interfered with Plaintiffs' contractual rights and have precluded Plaintiffs from complying with their contractual obligations.

31. Plaintiffs are entitled to damages proximately resulting from Defendants' breaches of contract, interference with contractual relationships, and violations of the duty of good faith and fair dealing.

#### **COUNT 3**

##### **VIOLATION OF CITY ORDINANCES**

32. Each of the preceding allegations is incorporated as if fully set out herein.

33. By their acts and omissions described herein the Defendants have violated City Ordinances, in particular the City's Labor-Management Relations Ordinance, Sec. 3-2-1, et seq. R.O.

34. Defendants should be sanctioned and are liable for damages resulting from their violation of City Ordinances relating to collective bargaining and grievance representation of City employees.

35. Plaintiffs are entitled to damages proximately resulting from Defendants' violations of City Ordinances.

#### **COUNT 4**

##### **MANDAMUS AND INJUNCTIVE RELIEF**

36. Each of the preceding allegations is incorporated as if fully set out herein.

37. The City Defendants have a mandatory and non-discretionary duty to comply with the laws of the State of New Mexico and the City of Albuquerque.

38. Plaintiffs have no other plain and prompt remedy, are beneficially interested in enforcement of the law, and are entitled to the award of extraordinary relief.

39. Plaintiffs have a likelihood of success on their claims of violation of the City's Labor-Management Relations Ordinance and will suffer irreparable damage if the requested relief is not granted.

40. Plaintiffs are entitled to a Writ of Mandamus or other injunctive relief.

## COUNT 5

### DECLARATORY JUDGMENT

41. Each of the preceding allegations is incorporated as if fully set out herein.

42. The application of the City's Labor-Management Relations Ordinance raises issues and concerns which require determination and clarification by the Court.

43. Included in the issues that are ripe for a declaratory judgment are those relating to decertification and bargaining unit representation, minority representation and negotiation by and with a minority representative, and representation by a representative of a bargaining unit outside the designated Transit Department drivers' bargaining unit. These are disputed matters of law that are of substantial concern to Plaintiffs, other City unions and employees, and the public.

44. The New Mexico Declaratory Judgment Act, Sec. 44-6-1 to 44-6-15, NMSA, permits the court "to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and is to be liberally construed and administered." Sec. 44-6-14, NMSA.

45. The application and enforcement of the City's Labor-Management Relations Ordinance is a matter of substantial public concern and importance; the controversy involves the rights and legal relations of the parties seeking declaratory relief; the interests of the parties are real and adverse, and the issues are ripe for judicial determination.

#### IV. RELIEF REQUESTED

Plaintiffs pray for the following relief:

A. Compensatory relief and damages in an amount to be determined at trial for violations of due process, breach of contract, and violations of law proximately resulting in harm to Plaintiffs and their interests.

B. Mandamus and/or injunctive relief precluding Defendants from engaging in these and other violations now and in the future, nullifying the representational election held in violation of the provisions of the LMRO, precluding the City from recognizing and negotiating with minority local unions, requiring the City to decertify such minority locals, and compelling the City Defendants to recognize and bargain in good faith with Plaintiffs.

C. Declaratory relief to define the rights and obligations of the parties under the circumstances set out herein on issues relating to the City's Labor-Management Relations Ordinance and the City's Labor-Management Relations Board.

D. Such other or further relief or award of damages deemed appropriate, including costs and attorney's fees allowed by law.

Respectfully submitted,



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