

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**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,**

Plaintiffs,

v.

No. CV 08-00735 JB/DJS

**CITY OF ALBUQUERQUE, NEW MEXICO
MARTIN CHAVEZ, Mayor of Albuquerque,
CITY LABOR-MANAGEMENT RELATIONS BOARD,
PAUL BROOM, 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.

**DEFENDANTS CITY OF ALBUQUERQUE, LAWRENCE TORRES,
PAUL BROOM AND MAYOR MARTIN CHAVEZ'S ANSWER TO
COMPLAINT OF VIOLATIONS OF CONSTITUTIONAL CONTRACTUAL
AND STATUTORY RIGHTS AND DEMAND FOR JURY TRIAL**

COMES NOW, Defendants City of Albuquerque, Lawrence Torres, Paul Broom and Mayor Martin Chavez (City Defendants), by and through their counsel of record, Assistant City Attorney Beatrice J. Brickhouse, and hereby submit their Answer to Plaintiff's Complaint of Violations of Constitutional Contractual and Statutory Rights and Demand for Jury Trial.

PARTIES

1. City Defendants admit the allegations contained in paragraph 1 of the Complaint.
2. City Defendants admit the allegations contained in paragraph 2 of the Complaint.
3. City Defendants admit the allegations contained in paragraph 3 of the Complaint.
4. The allegations contained in paragraph 4 of the Complaint are not directed toward

Defendant City and therefore require no admission or denial.

5. City Defendants admit the allegations contained in paragraph 5 of the Complaint.

II. FACTUAL AND PROCEDURAL BACKGROUND

6. City Defendants admit the allegations contained in paragraph 6 of the Complaint.
7. City Defendants deny the allegations contained in paragraph 7 of the Complaint.
8. City Defendants deny the allegations contained in paragraph 8 of the Complaint.
9. City Defendants admit the allegations contained in paragraph 9 but affirmatively

state that the contract never went into effect because the collective bargaining members voted in AFSCME as their representational organization.

10. City Defendants deny the allegations contained in paragraph 10 of the Complaint.
11. City Defendants deny the allegations contained in paragraph 11 of the Complaint.
12. City Defendants admit the allegations contained in paragraph 12 of the

Complaint.

13. City Defendants deny the allegations contained in paragraph 13 of the Complaint.

14. Defendant City is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the complaint.

15. City Defendants deny the allegations contained in paragraph 15 of the Complaint.

16. City Defendants admit that AFSCME membership cards included many employees who were already dues paying member of the NMTU and that Defendants kept those

membership cards secret, but denies that the Labor Board failed to hear or decide the NMTU's motion for disclosure of AFSCME membership cards.

17. Defendant City is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the complaint.

18. Defendant City is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the complaint.

19. City Defendants deny the allegations contained in paragraph 19 of the Complaint.

20. City Defendants deny the allegations contained in paragraph 20 of the Complaint.

21. City Defendants admit the allegations contained in paragraph 21 of the Complaint however, NMTU no longer is the representational organization for the City motor coach operators.

22. City Defendants deny that they are purporting to negotiate new contracts for the transit drivers without acknowledgment of the existence of the NMTU. City Defendants admit that they are negotiating contracts with other bargaining units and are without knowledge sufficient to form a belief as to the truth of the remaining allegation in paragraph 22.

23. City Defendants deny the allegations contained in paragraph 23 of the Complaint.

24. City Defendants deny the allegations contained in paragraph 24 of the Complaint.

25. City Defendants admit the allegations contained in paragraph 25 of the Complaint.

**III. CAUSE OF ACTION
COUNT 1
VIOLATIONS OF DUE PROCESS**

26. In response to paragraph 26 of the Complaint, the City restates and incorporates by reference by its answer contained in paragraph 1 through 26 of this Answer as if set forth in full herein.

27. City Defendants deny the allegations contained in paragraph 27 of the Complaint.

COUNT 2
BREACH OF CONTRACT AND
INTERFERENCE WITH CONTRACTUAL RIGHTS

28. In response to paragraph 28 of the Complaint, the City restates and incorporates by reference by its answer contained in paragraph 1 through 28 of this Answer as if set forth in full herein.

29. City Defendants deny the allegations contained in paragraph 29 through 31 of the Complaint.

COUNT 3
VIOLATION OF CITY ORDINANCES

30. In response to paragraph 32 of the Complaint, the City restates and incorporates by reference by its answer contained in paragraph 1 through 32 of this Answer as if set forth in full herein.

31. City Defendants deny the allegations contained in paragraph 33 through 35 of the Complaint.

COUNT 4
MANDAMUS AND INJUNCTIVE RELIEF

32. In response to paragraph 36 of the Complaint, the City restates and incorporates by reference by its answer contained in paragraph 1 through 36 of this Answer as if set forth in full herein.

33. In response to the allegations contained in paragraph 37 of the Complaint, these allegations appear to contain legal conclusions, which cannot be admitted or denied.

34. City Defendants deny the allegations contained in paragraph 38 through 40 of the Complaint.

COUNT 5
DECLARATORY JUDGMENT

35. In response to paragraph 41 of the Complaint, the City restates and incorporates by reference by its answer contained in paragraph 1 through 41 of this Answer as if set forth in full herein.

36. In response to the allegations contained in paragraphs 42 through 45 of the Complaint, these allegations appear to contain legal conclusions, which cannot be admitted or denied. To the extent they are factual allegations they are denied.

37. Any allegations of the Complaint not specifically admitted or denied above are hereby denied.

DEMAND FOR JURY TRIAL

City Defendants demand a trial by jury on all issues, which City Defendants are entitled to.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint may fail, in whole or in part, to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Defendant's alleged actions or purported omissions in this matter do not rise to the level of any contractual, statutory, constitutional or other deprivation of Plaintiffs' rights.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, are barred or reduced to the extent that Plaintiffs have failed to mitigate such damages.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims against this Defendant are barred, in whole or in part, by immunity.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiff has failed to seek, follow and/or exhaust administrative remedies, procedures and requirements, and to the extent that the Plaintiffs have an adequate remedy at law.

SIXTH AFFIRMATIVE DEFENSE

Defendants had legitimate, non-discriminatory business reasons for any and all actions taken.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are bared, in whole or in part, by the doctrines of waiver, estoppel, unclean hands, and laches and to the extent they are governed and precluded by applicable statutory law, including the terms of the Public Employee Bargaining Act.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred to the extent that they received all of the process to which they were due.

NINTH AFFIRMATIVE DEFENSE

The proximate cause of Plaintiffs' alleged injuries and damages, if any, was the acts or omissions of persons or parties other than City Defendants.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' claim for damages are barred or limited as a matter of law.

ELEVENTH AFFIRMATIVE DEFENSE

City Defendants are entitled to all defenses available to them under New Mexico law, federal law and the constitution.

WHEREFORE, having fully answered Defendant City of Albuquerque requests an Order of this Court dismissing the Plaintiffs' Complaint as to the City of Albuquerque, assessing the costs of Defendant City to the Plaintiffs, and for such other and further relief as this court deems just and proper in the premises.

Respectfully submitted,

CITY OF ALBUQUERQUE
Robert M. White
City Attorney

Beatrice J. Brickhouse
Assistant City Attorney
Attorney for City Defendants
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I hereby certify that a true copy
of the foregoing was electronically
filed on the 12th day of August, 2008.

Beatrice J. Brickhouse
Assistant City Attorney