

**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 08-735 JB-DJS**

**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.**

**DEFENDANT AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL  
EMPLOYEES, COUNCIL 18, ANDREW PADILLA, President of Council 18, AND  
LOCAL 624, RON MEDINA, President, ANSWER TO PLAINTIFFS' COMPLAINT**

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES,  
COUNCIL 18, ANDREW PADILLA, President of Council 18, AND LOCAL 624, RON MEDINA,  
President, (Hereinafter, "AFSCME"), by and through their undersigned attorney, answers the  
Complaint, as follows:

**I. PARTIES**

1. As to paragraph 1, AFSCME agrees that New Mexico Transportation Union (NMTU);

Fred Garcia, Chairman, NMTU executive board, officers and members of the NMTU are plaintiffs.

2. As to paragraph 2, AFSCME agrees that 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 are 'City' defendants.

3. As to paragraph 3, AFSCME agrees the American Federation of State, County, and Municipal Employees (AFSCME), Council 18, Andrew Padilla, President of Council 18, and Local 624, Ron Medina, President and their presiding officers are also defendants, henceforth 'AFSCME' Defendants.

4. As to paragraph 4, AFSCME does not have sufficient knowledge of the relationship between NMTU and the City to either admit or deny the allegations made in this paragraph.

5. As to paragraph 5, AFSCME is without sufficient information to form a belief as to the truth of the statements contained in Plaintiffs' complaint and, therefore, denies the same.

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

6. As to paragraph 6, AFSCME admits to the best of its knowledge the allegations in this paragraph are true.

7. As to paragraph 7, AFSCME declines to respond to allegations directed at the City of Albuquerque and/or the City Labor-Management Relations Board.

8. As to paragraph 8, AFSCME declines to respond to allegations directed at the City of Albuquerque and/or the City Labor-Management Relations Board.

9. As to paragraph 9, AFSCME does not have sufficient knowledge of the relationship between NMTU and the City to either admit or deny the allegations made in this paragraph.

10. As to paragraph 10, AFSCME denies any allegations of collusion, but does admit that

Council 18 and Local 624 fully complied with the city Labor Relations Management Ordinance, supported by state and federal law, in requesting a representational election within the 90-120 day 'open window' period consistent with the city's LMRO.

11. As to paragraph 11, consistent with the city's LMRO, AFSCME admits that it appropriately acquired and documented a showing of sufficient interest (30 percent) to warrant an election by city transit and van drivers, consistent with their union voting rights, but AFSCME denies any knowledge or assistance from city defendants in its 'showing of interest' attempts.

12. As to paragraph 12, AFSCME declines to respond to allegations directed at the City of Albuquerque and/or the City Labor-Management Relations Board.

13. As to paragraph 13, AFSCME declines to respond to allegations directed at the City of Albuquerque and/or the City Labor-Management Relations Board.

14. As to paragraph 14, AFSCME declines to respond to allegations directed at the City of Albuquerque and/or the City Labor-Management Relations Board.

15. As to paragraph 15, AFSCME declines to respond to allegations directed at the City of Albuquerque and/or the City Labor-Management Relations Board.

16. As to paragraph 16, AFSCME declines to respond to allegations directed at the City of Albuquerque and/or the City Labor-Management Relations Board.

17. As to paragraph 17, AFSCME admits that AFSCME representatives, including members of the Interfaith Ministry spoke at the city council meeting on or around April 7, 2008, AFSCME further admits that it supports the Ministry, but denies that it 'falsely advised' the City Council and others that the City was acting in collusion with the NMTU.

18. As to paragraph 18, AFSCME admits that it raised concerns regarding the adequacy of

NMTU's representation at the City Council meeting, AFSCME declines to respond for the City regarding the allegations directed at the City in this paragraph.

19. As to paragraph 19, AFSCME declines to respond to allegations directed at the City of Albuquerque and/or the City Labor-Management Relations Board.

20. As to paragraph 20, AFSCME declines to respond to allegations directed at the City of Albuquerque and/or the City Labor-Management Relations Board.

21. As to paragraph 21, AFSCME declines to respond to allegations directed at the City of Albuquerque and/or the City Labor-Management Relations Board.

22. As to paragraph 22, AFSCME admits that it is currently negotiating a labor contract with the City as sole, elected representative of the City's transit and motor coach operators pursuant to its April election and notes that Plaintiffs do not have standing to bring charges against AFSCME Locals regarding their level of support across bargaining units. In particular, the LMRO states, regarding majority status, that it is the **city** which must make "a statement by the city government that it harbors a good-faith doubt that the exclusive bargaining representative has the support of the majority of employees in the bargaining unit" in order for the Board to consider the majority-support issues. LMRO 3-2-6(H). No such statement from the city is present here.

23. As to paragraph 23, AFSCME is without sufficient information as to the status of the city transit drivers and motor coach operators. AFSCME admits that it won a city-ratified and city-sanctioned representational election in April, 2008 to negotiate a collective bargaining agreement on behalf of the city transit drivers and motor coach operators.

24. As to paragraph 24, AFSCME denies these allegations contained in this paragraph.

25. As to paragraph 25, AFSCME denies all factual allegations contained in this paragraph

and notes again that Plaintiff does not have standing to bring charges against AFSCME Locals regarding their level of employee support across bargaining units. In particular, the LMRO states, regarding support status, that it is the **city**, and not a rival Union, which must make “a statement by the city government that it harbors a good-faith doubt that the exclusive bargaining representative has the support of the majority of employees in the bargaining unit” in order for the City Labor Board to consider the majority support issue. LMRO 3-2-6(H). Again, no such statement from the city is present here.

### **III. CAUSE OF ACTION**

#### **COUNT 1**

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

26. In response to paragraph 26 of the Complaint, AFSCME 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. As to paragraph 27, AFSCME denies the allegations contained in this paragraph.

#### **COUNT 2**

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

28. In response to paragraph 28, AFSCME 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. As to paragraph 29, AFSCME declines to respond to allegations directed at the City of Albuquerque and/or the City Labor-Management Relations Board.

30. As to paragraph 30, AFSCME denies the allegations contained in this paragraph.

31. As to paragraph 31, AFSCME denies the allegations contained in this paragraph as they relate to AFSCME and declines to respond to allegations directed at the City of Albuquerque and/or the City Labor-Management Relations Board.

**COUNT 3**

**VIOLATION OF CITY ORDINANCES**

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

33. As to paragraphs 33 through 35, AFSCME declines to respond to allegations directed at the City of Albuquerque and/or the City Labor-Management Relations Board in Count 3 and paragraphs 33 through 35 of this Complaint.

**COUNT 4**

**MANDAMUS AND INJUNCTIVE RELIEF**

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

35. As to paragraph 37, AFSCME declines to respond to allegations directed at the City of Albuquerque and/or the City Labor-Management Relations Board.

36. As to paragraph 36, AFSCME denies the allegations contained in paragraphs 38 through 40 of this Complaint.

**COUNT 5**

**DECLARATORY JUDGMENT**

37. In response to paragraph 41, AFSCME restates and incorporates by reference by its answer contained in paragraph 1 through 37 of this Answer as if set forth in full herein.

38. As to paragraphs 42 through 45 of Plaintiff's Complaint, AFSCME declines to respond to allegations directed at the City of Albuquerque and/or the City Labor-Management Relations Board. In addition, in these paragraphs Plaintiff's Complaint sets forth legal conclusions, which cannot be admitted or denied. To the extent these allegations in these paragraphs are factual and relate to AFSCME, they are denied.

#### **IV. RELIEF REQUESTED**

39. As to relief requested in Complaint subparagraphs A, B, C and D on page 9 of Complaint, AFSCME denies that Plaintiffs are entitled to relief requested.

40. Any allegations of the Complaint not specifically admitted or denied above by AFSCME are hereby denied.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST AFFIRMATIVE DEFENSE**

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

##### **SECOND AFFIRMATIVE DEFENSE**

Defendant AFSCME'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**

To the extent Defendant was allegedly negligent or otherwise at fault under any theory, which is specifically denied, then Plaintiffs' and/or other persons were also negligent or otherwise at fault, thereby barring or reducing Plaintiffs' recovery from the Defendant under the principles of comparative fault.

**FOURTH AFFIRMATIVE DEFENSE**

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

**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 barred, in whole or in part, by the doctrines of waiver, estoppel, unclean hands, 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**

Plaintiffs' claims are barred, in whole or in part, to the extent immunity for such claims has not been waived.

**TENTH AFFIRMATIVE DEFENSE**

All actions of the Defendant were done in good faith, were fair, reasonable, honest and undertaken in compliance with all applicable laws, rules and ordinances.

**ELEVENTH AFFIRMATIVE DEFENSE**

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

**TWELFTH AFFIRMATIVE DEFENSE**

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

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the Plaintiffs' lack of standing.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The defendant reserves the right to rely upon such other defenses as may become known or available during discovery proceedings in this case and hereby reserves the right to amend its answer to include such defenses.

WHEREFORE, having fully answered the Plaintiffs' Complaint, the Defendant respectfully requests that the Court dismiss the Plaintiffs' Complaint with prejudice, award the Defendant its costs and attorneys' fees incurred herein, and for such other and further relief as the Court deems just and proper.

Dated: August 14, 2008

Respectfully submitted,

**YOUTZ & VALDEZ, P.C.**

/s/ Shane Youtz

Shane Youtz  
900 Gold Avenue SW  
Albuquerque, NM 87102  
Telephone: (505) 244-1200  
Facsimile: (505) 244-9700  
[shane@youtzvaldez.com](mailto:shane@youtzvaldez.com)

*Attorney for Defendants*

I hereby certify that a true and correct copy of the foregoing Answer was served via electronic notification through the CM/ECF system this 14<sup>th</sup> day of August, 2008, to the following:

Paul Livingston  
P.O. Box 250  
Placitas, NM 87043  
*Attorney for Plaintiffs*

William D. Slease  
Jonlyn M. Martinez  
SLEASE & MARTINEZ, P.A.  
P.O. Box 1805  
Albuquerque, NM 87103-1805  
*Attorneys for Defendants City of Albuquerque  
Labor Management Relations Board*

Beatrice Brickhouse  
Assistant City Attorney  
P.O. Box 2248  
Albuquerque, NM 87103  
*Attorney for Defendants City of Albuquerque,  
Mayor Chavez, Paul Broome and Lawrence Torres*

/s/ Shane C. Youtz  
Shane Youtz