

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT

No. CV 2003-02215

NEW MEXICO TRANSPORTATION UNION,  
ROBERT GUTIERREZ, Chairman,  
and  
BUS and VAN DRIVERS IN THE NMTU  
BARGAINING UNIT

Plaintiffs,

vs.

CITY OF ALBUQUERQUE, MARTIN CHAVEZ,  
Mayor, JAMES LEWIS, Chief Administrative Officer,  
PETER BEHRMAN, Transit Department Director,

Defendants.

DEFENDANT CITY OF ALBUQUERQUE'S FIRST SUPPLEMENTAL ANSWERS TO  
PLAINTIFFS' INTERROGATORIES TO THE CITY OF ALBUQUERQUE

---

Defendant City of Albuquerque, through Assistant City Attorney Paula I. Forney  
answers plaintiffs' interrogatories to the City of Albuquerque as follows:

INTERROGATORY NO. 1. Please identify each person(s) answering or assisting  
in answering each and any of the interrogatories below , providing each such person's  
knowledge of the facts and allegations of this lawsuit. Please specify which of the  
following Interrogatories that person answered or assisted in answering.

ANSWER: Jeannette Lovato – Boards and Commissions

Shannon Watson – Mediation Program

Answers Nos. 3

Barbara Keiser, Paul Broome – Employee Relations

Answers Nos. 3, 5, 7, 8, 9, 10, 14, 15, 18

**Plaintiffs'**  
**EXHIBIT 1**

Anita Bustos-Rubi—ADR Program Manager

Answers Nos. 3, 11, 12, 13

INTERROGATORY NO. 2. With respect to paragraph 1 of the First Amended Complaint which states that Plaintiffs are the NMTU and Chairman Robert Gutierrez, representing City of Albuquerque bus and van drivers in the NMTU bargaining unit, please explain fully the City's response which states that "Plaintiffs Bus and Van Drivers are in the process of negotiating a new contract with the Plaintiff, NMTU and deny any remaining implications or allegations." Please state what negotiation process is underway and what "remaining implications or allegations" are being denied.

ANSWER:

Since the Answer to the First Amended Complaint was filed, a new contract has been negotiated, and that answer contemplated those negotiations, which created the uncertainty of representation at the time.

INTERROGATORY NO. 3. With respect to the allegation in paragraph 12 of the First Amended Complaint that the City has failed to comply with certain obligations, please state how the City Defendants have complied, or attempted to comply, with the obligations stated and admitted in paragraphs 5 (maintaining “appropriate grievance and appeal procedures”), paragraph 6 (hiring or appointing “an officer to administer the merit system”, paragraph 7 (establishing and maintaining a performance evaluation “system to evaluate the work performance of city employees”), paragraph 8 (providing that “the work performance of (every) employee shall be officially evaluated.. . at least once a year”), paragraph 9 (providing review by the Mediation Program Coordinator in an effort to avoid discipline), paragraph 10 (providing a five member Personnel Board), and paragraph 11 (selecting and contracting with fair Hearing Officers for a term not to exceed two years). Please identify the individuals involved, describe the form and extent of alleged compliance, and provide specific dates of compliance with each of the obligations stated in paragraphs 5 to 11.

ANSWER: In regard to Paragraph 9 only: Providing review by the Mediation Program Coordinator in an effort to avoid discipline.

The ADR Division is working to meet with all Department Directors and Union Representatives to discuss the requirements of the Employee Mediation Program. Additionally, two memorandums have been produced to the Department Directors and to Division Managers (through the Department’s HR coordinator) discussing the Employee Mediation Program.

With regards to the remaining questions, Defendant City is still attempting to gain the information requested. Once the information is received, this answer will be supplemented accordingly.

Moreover, the City's ADR program has been active since 1992, with hundreds of mediations carried out over that timeframe. The program is open to every employee and supervisor. The department or the employee can request mediation. If one party declines the invitation to participate in mediation, the mediation coordinator will determine the matter to be inappropriate for mediation. The mediation coordinator opens confidential files for every pre-determination, every general employee mediation request, and grievance. Mediation is instituted as part of the first step in a grievance. And while referral to mediation is mandatory in disciplinary and grievance matters, participation in mediation is voluntary.

Paragraph 5: Grievance and appeal procedures: The Labor Board and Personnel Board have been fully constituted and functioning. Hearing officers have been selected, appointed and hearing and deciding appeals for the Personnel Board. The City has not received any indication from plaintiff that the procedures in any particular case or PPC were inappropriate, not followed, or illegal and all pending actions have been or are in the process of being resolved.

Paragraph 6: There is no obligation under the City's Charter or the Merit System Ordinance to hire an officer to administer the Merit System. The city has in place an individual charged with the responsibility of administering the MSO, and that is the CAO. MSO § 3-1-1. There is no identified failure by any specific individual to administer the Merit System in the complaint.

Paragraph 7, 8: Evaluations: Since the entry of the mandamus, the City has attempted implementation of the EWP (Employee work plan). The EWP was implemented in approximately 2002, immediately after the mandamus order. Training was provided by Patricia Miller and other HR personnel to department HR coordinators and managers on implementation of the EWP. Later in 2002, several

labor unions objected to the EWP, including the managers' union which filed a PPC with the Labor board and refused to attend the training. The managers' union advised its members to refuse to participate in the training. Evaluations were addressed during contract negotiations with all unions except Fire and Police, continuing into 2003 and 2004. During the negotiations, several unions demanded to negotiate the evaluation process. The city did not incorporate the demands in the negotiations and the contracts were finally ratified in May, June, 2004. Since then, an evaluation instrument has been promulgated and circulated to six of the seven unions in March, 2005 requesting comments by March 11, 2005. No comments were received. An administrative instruction implementing the evaluation instrument is being prepared for execution.

Paragraph 10: Personnel Board: A five member board is required under the ordinance. Two members are appointed by the mayor, two are elected by the employees and the fifth is appointed by the other four. The Board has never stopped functioning because of a lack of appointments by the mayor or the employees. In the absence of a member, the ordinance permits the board to act through a quorum. The Board has not had less than a quorum and has continued to hear and decide cases.

Paragraph 11: Hearing officers. See documents previously produced.

INTERROGATORY NO. 4. Please identify and describe with specificity the names, dates of service, method of selection, and dates of replacement of all Personnel Board members and Chairpersons between 1996 and the present.

ANSWER: See documents attached to Request for Production No. 3, bates no. 000101 - 000144.

INTERROGATORY NO. 5. Please identify and describe with specificity any and all actions, records, and communications responsive to the Writ of Mandamus issued on March 8, 2002. ordering the City to promptly reestablish its Personnel Board. To the extent not already provided in response to interrogatory No. 3, please state and describe all documentary and evidentiary support for the contention that the City has “properly selected and appointed Personnel Board members” and Chairpersons between January 1, 1998, and the present.

ANSWER: After a diligent search, records to respond to this request could not be located. If any are located, this request will be supplemented.

*See response to Interrogatory no. 3, above. The City has had a fully functional board in place since 2002. See also documents produced in response to no. 4, above.*

INTERROGATORY NO. 6. Please describe fully the selection and contracting process used to employ Personnel Hearing Officers since January 1, 1998. For each time one or more Hearing Officers were selected please describe the process, including dates, and identify the applicants, the persons making the selection, the members of any committee or group assisting in the selection, and the person(s) selected.

ANSWER: Attached to request for production no. 11 is a listing of hearing officer contracts, Bates no. 000160 – 000166. Other documents relating to the process will be disclosed if and when located. Plaintiff may review request for proposal records and specific contracts by making an appointment with Terry Armstrong, paralegal to Paula I. Forney, at 768-4568, to arrange for a mutually agreeable time and date for review and copying.

INTERROGATORY NO. 7. Please identify the date, location and person(s) participating in each and every meeting, interview, or decision-making process involved in selecting and contracting with any Personnel Hearing Officer since January 1, 1998. For each such meeting, interview, or decision please state whether the meeting, interview, or decision-making process took place at a public meeting or was otherwise open to the public or concerned persons. For each closed meeting please state the applicable exception to the Open Meetings Act and identify the person(s) responsible for excluding the public. For each open meeting, interview or decision-making process please provide the notification to the public.

ANSWER: See response to interrogatory no. 6.

Pursuant to the city's Purchasing Ordinance, hiring of hearing officers is governed under the City's procurement procedures. See 5-5-10E.(c). Under those procedures, the meetings to discuss selection are confidential. All relevant documents concerning the retention of hearing officers have been previously produced. The City is not governed by the State's purchasing statutes.

INTERROGATORY NO. 8. Please state and describe any and all actions, communications, or correspondence concerning the statements made to the Personnel Board on November 20, 2002, by NMTU's representatives Bob Schwartz and Robert Gutierrez. as well as subsequent statements made to the Personnel Board by Mr. Gutierrez or Paul Livingston on the same subjects, including identification of any document or record and the identity of any person involved or participating in the responsive actions. communications, or correspondence.

ANSWER:

Personnel Board minutes from November 20, 2002 to the current date are produced in response to this interrogatory. Because plaintiff has not identified the "same subjects" being discussed at that meeting, all subsequent minutes are being produced.

INTERROGATORY NO. 9. Please identify each and every Transit Department employee who was terminated, suspended for more than ten days or demoted at any time since January 1, 1998. For each such person please state the date of each disciplinary action, identify the supervisor taking the action; give the date of referral (if any) to the Mediation Coordinator, provide a statement of the reason for imposing discipline, describe any grievance or appeal of the discipline, and state the type and length of discipline imposed.

ANSWER: See documents attached to request for production no. 1. Produced in response to this request is the list of all terminated Transit department employees since 1998. The City HR computer does not maintain information concerning other than terminations and the City is obtaining such information from the Transit department. See Response to Request for Production Nos. 4 and 10. The Transit department's computer system is unavailable and this information will be produced by Monday, August 8.

INTERROGATORY NO. 10. Please describe any and all efforts to reinstate annual performance evaluations at any time since January 1, 1995 and for each such effort or attempt please identify the person(s) participating and identify any documents or records that support or provide evidence for the contention that such efforts took place.

ANSWER: After a diligent search, records to respond to this request could not be located. If any are located, this request will be supplemented. Any documents concerning the employee work plan process that was initiated are being located and will be produced.

See response to no. 3, above. The City does not have information prior to the current administration concerning the implementation of evaluations. The City is aware that some departments were conducting evaluations during this period of time but is unaware of which departments and/or divisions were conducting such evaluations.

INTERROGATORY NO. 11. Please state and describe the policies, rules and regulations, guidelines, and administrative instructions that apply to the City's alternative dispute resolution program applicable to Transit Department employees, including but not limited to referrals to a Mediation Coordinator.

ANSWER: The City of Albuquerque Legal Department's ADR Division maintains the National Standard of voluntary participation in the mediation process. In the Employee Mediation Program either party may decline to participate in the mediation process.

The *Model Standards for Conduct of Mediators*, developed by the American Arbitration Association, the Dispute Resolution Section of the American Bar Association, and the Association for Conflict Resolution emphasizes that self-determination is a fundamental principle of mediation.

See also the Merit System Ordinance at § 3-1-22, -23, -24; see the Personnel Rules and Regulations at §§ 900, 901, and 902.2; see Administrative Instruction 1-11(Revised). The documents speak for themselves as to their applicability.

INTERROGATORY NO. 12. Please state when and by whom the City's policy and practice of only approving mediation in cases where both the employee and the referring supervisor approved (or did not decline) mediation was formulated, identify each and every person involved in suggesting, formulating, promulgating, or administering such a policy and practice, provide specific dates, and identify each and every record or document evidencing any such policy or practice(s).

ANSWER: The City of Albuquerque Legal Department's ADR Division maintains the National Standard of voluntary participation in the mediation process. In the Employee Mediation Program either party may decline to participate in the mediation process:

The *Model Standards for Conduct of Mediators*, developed by the American Arbitration Association, the Dispute Resolution Section of the American Bar Association, and the Association for Conflict Resolution emphasizes that self-determination is a fundamental principle of mediation.

JoEllen Howarth, the former ADR Coordinator from 1992 to 2004, and Judy Kelley, former Deputy City Attorney, formulated the policy of not requiring mediation without the agreement of both parties, consistent with national standards. To the City's knowledge there has never been a different policy from the inception of the program till now.

INTERROGATORY NO. 13. Please identify the City's policy and practice(s) relating to the approval or rejection of mediation of disciplinary actions against Transit Department employees, identify any instructions, memos, correspondence, guidelines, or other records, documents, training, or materials concerning such policy and practice(s), including but not limited to exclusion of mediation in drug testing, insubordination and/or violence in the workplace cases. state when and by whom the policy and practice was formulated and initiated. identify each and every person involved in suggesting, formulating, promulgating, or administering such a policy and practice, provide specific dates, and identify each and every record or document evidencing the existence of any such policy or practice(s).

ANSWER: The City of Albuquerque Legal Department's ADR Division utilizes guidelines for determining whether a case is appropriate or inappropriate for mediation. These broad guidelines are not directed solely to Transit Department Employees.

Mediation is generally considered inappropriate when: 1) One party declines to mediate; 2) A history of unproductive mediations between the participants; 3) There is a violence in the workplace issue; 4) A positive Drug Test. These classifications are considered inappropriate because of mediation's fundamental self-determination principle noted in the answer to Interrogatory No. 12. However, these classifications are not exclusionary.

The policy of not requiring mediation without the agreement of both parties is a practice directly related to the voluntary nature of participation in the ADR program.

As to who was responsible for formulating the policy and the dates, see answer to Interrogatory No. 12.



INTERROGATORY NO. 14. Please list and describe any effort or attempt to hire or appoint an officer to administer the merit system,” in accordance with the provision of the City Charter. If no such effort or attempt has been made, state why not; if such effort or attempt has been made state what process and persons were involved, including specific dates and identification of documents supporting or evidencing the contention that any such effort or attempt was undertaken.

ANSWER: The Mayor appoints the chief Administration Officer (CAO) to administer the merit system, pursuant to § 3-1-1 of the merit system ordinance.

*See response to No. 3, above.*

INTERROGATORY NO. 15. For each and every time the City Personnel Board has gone into Executive (closed) Session before, during, or after an otherwise public meeting since January 1, 1998, except for the purpose of deliberating on a specific case specified in the minutes of the Personnel Board meeting, please state the date, reason, name the applicable exception to the Open Meetings Act. identify the person making the motion to go into closed session (if any). state how each person voting on the motion voted, and identify the persons present in the closed meeting.

ANSWER: There are no records of any Executive (closed) Session.

Minutes of the Personnel Board are being produced. The minutes do not reflect the proceedings during executive sessions. Agenda and minutes for the years in question are available for review at City Hall.

INTERROGATORY NO. 16. Please list and describe each time since January 1, 1998, that a case has been remanded to the Personnel Board by any court or administrative body; for each such case please describe and identify the persons representing the City and the grievant, complainant, petitioner or plaintiff; identify the persons (including any City attorney or Hearing Officer) to whom the case was referred or delegated; give the dates, state the reason, and state what action was taken by the Personnel Board on remand.

ANSWER: Lawrence Baca.

Anthony Pacheco.

Paula Forney represented the City in each case, the petitioner has been identified, the cases were not referred or delegated but were sent to the Personnel Board. See attached orders on remand and responses of the Personnel Board.

Other cases relating to this interrogatory will be disclosed if and when located.

INTERROGATORY NO. 17. For each fiscal year starting on July 1, 1998, please state the amount of budget allocated to legal and administrative support of the City Personnel Board and support and/or enforcement of the Merit System Ordinance.

ANSWER: Defendant City has not yet received this information from responsible departments. When the information is received, this interrogatory will be supplemented.

Copies of the City's budget applicable to Boards and Commissions and the City Attorney's office.

INTERROGATORY NO. 18. Please provide the City's best estimate of the cost and method of re-establishing a system of performance evaluations that would provide at least annual performance evaluations for each City employee as required by the Merit System Ordinance. Please include information about any and all prior efforts, since January 1, 1998, to reinstate performance evaluations and explain the cost and reason(s) such efforts have not been successful.

ANSWER: Defendant City has not yet received this information from responsible departments. When the information is received, this interrogatory will be supplemented.

There is no estimate at this time.

INTERROGATORY NO. 20. Please identify any and all rules, regulations, ordinances, laws, or administrative instructions supporting or relating to the requirement that hiring, promotion, demotion, and termination of employment at the Transit Department be based primarily on the relative merit, as measured by performance and ability, of the employee(s).

ANSWER: Merit System Ordinance section 3-1; Personnel Rules and Regulations section 900.

INTERROGATORY NO. 21. Please list and identify each and every disciplinary action involving termination, demotion, or suspension for more than five days in which an employee in the NMTU's bargaining unit was required or requested to respond to charges at a predetermination hearing prior to or in the absence of a review of the case by the City's Mediation Coordinator.

ANSWER: Upon a production of a list of names, the City's Mediation Program can indicate if an individual from the list was referred for mediation. The ADR Division can also state whether or not mediation occurred. All other information is confidential.

INTERROGATORY NO. 22. For each witness or potential witness listed in your federal court Initial Disclosures or initial pre-trial report and/or the City's witness list for trial of this case, please identify the person; state fully and with specificity what that person is expected to testify about; what exhibits, documents, records, or information that person will rely on; what issue, claim, or defense that testimony is expected to be relevant to. and describe the knowledge and experience of the person that qualifies that witness or potential witness to testify on the subjects or matters identified.

ANSWER:

1. Peter Behrman, Director of Transit  
c/o Paula I. Forney  
Assistant City Attorney  
P. O. Box 2248  
Albuquerque, NM 87102  
Ph: 768-4500

Mr. Behrman the Director of Transit, has knowledge about issues related to the department as well as the practices related to mediation.

2. Emma Gonzales-Moore  
Former Personnel Manager  
c/o Paula I. Forney  
Assistant City Attorney  
P. O. Box 2248  
Albuquerque, NM 87102  
Ph: 768-4500

Ms. Moore knowledge related to matters concerning discipline and mediation, as well as other personnel issues.

3. Jay Czar, Chief Administrative Officer  
c/o Paula I. Forney  
Assistant City Attorney  
P. O. Box 2248  
Albuquerque, NM 87102  
Ph: 768-4500

Mr. Czar has general knowledge of the events alleged in Plaintiffs' Complaint.

4. Pat Miller  
c/o Paula I. Forney  
Assistant City Attorney  
P. O. Box 2248  
Albuquerque, NM 87102  
Ph: 768-4500

Ms. Miller, as Director of Human Resources, has knowledge of personnel matters including, but not limited to, performance evaluations.

5. Mary Scott  
c/o Paula I. Forney  
Assistant City Attorney  
P. O. Box 2248  
Albuquerque, NM 87102  
Ph: 768-4500

Ms. Scott has knowledge of the events alleged in Plaintiffs' Complaint.

6. Plaintiffs  
c/o Paul Livingston  
Attorney at Law  
P. O. Box 250  
Placitas, NM 87043

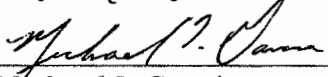
INTERROGATORY NO. 23. Please identify completely and with specificity each and every exhibit, record, or document that you anticipate presenting at the trial of this case. For each such exhibit, record or document, please state what claim or defense it is relevant to and describe and discuss that relevance fully and with specificity.

ANSWER:

1. City Charter, City's Personnel Rules and Regulations, Merit System Ordinance are located at the City Clerk's Office, One Civic Plaza NW, 11<sup>th</sup> Floor, Albuquerque, NM 87102.
2. United Transportation Union Local 1745 Contract is located at the City Clerk's Office, One Civic Plaza NW, 11<sup>th</sup> Floor, Albuquerque, NM 87102.
3. Suspension documents on the following employees: Paul Froonjian; Leroy Garcia; Ricardo Gonzales; Eileen Lopez; Robert Medina; Robert Montoya; Joe Ramirez; and Wilma Vallejos.
4. All documents produced pursuant to discovery requests by either party.

Respectfully submitted,

CITY OF ALBUQUERQUE  
Robert M. White  
City Attorney

  
\_\_\_\_\_  
Michael I. Garcia  
Assistant City Attorney  
Attorney for The City  
P. O. Box 2248  
Albuquerque, New Mexico 87103  
(505) 768-4500