

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.

JAMES LEWIS' FIRST SUPPLEMENTAL ANSWERS
TO PLAINTIFFS' INTERROGATORIES TO JAMES LEWIS

Defendant James Lewis, through Assistant City Attorney Paula I. Forney
answers plaintiffs' interrogatories to James Lewis as follows:

INTERROGATORY NO. 1. Please state when and how you became aware that there was any problem or concern about a) the administration of the Merit System Ordinance. b) the maintenance of an active Personnel Board. c) the requirement of referrals to the Mediation Coordinator, d) the hiring or appointment of a person to administer the merit system, or e) the provision of annual performance evaluations for City employees. Please describe fully what information you had or were made aware of about each of these issues, identify the person(s) bringing the matter(s) to your attention, if any, give the dates, state the specific concerns brought to your attention, and identify any documents, records, or communications addressing these matters.

Plaintiffs'
EXHIBIT 2

ANSWER: There has not been a problem or concern about merit system ordinance, personnel board, mediation coordinator or annual performance evaluations since Defendant Lewis' appointment as Chief, Administrative Officer that Defendant Lewis is aware of, other than this lawsuit.

During my tenure, questions have arisen on specific issues concerning these matters. With regard to the ordinance, there has been no specific issue other than it has been generally discussed. The personnel board has been discussed to the extent I wished to insure appropriate constitution. I have been made aware of some concerns about the mediation coordinator and have referred those concerns to Ms. Watson or Mr. Autio. Performance evaluations have been discussed with the City Attorney, labor unions and employee relations as well as Gail Reese and a form developed which is being reviewed for implementation. While input from the unions on this proposed form was sought, no input was provided. After I determined that there was enough time for response, I have decided to impose the evaluation process through an administrative instruction.

INTERROGATORY NO. 2. Please state fully what knowledge or information you now have about the City's failure to conduct annual performance evaluations. Please explain and include in your response your understanding of the seriousness and extent of the problem, the legality, illegality, or propriety of failing to conduct annual performance evaluations, your knowledge about the departments where the problem is especially extreme, and your understanding, knowledge, and recollection of prior actions and proposals for eliminating the problem by you or your predecessors.

ANSWER: There has not been an issue about annual performance evaluations since Defendant Lewis' appointment as Chief, Administrative Officer that Defendant Lewis is aware of, except this lawsuit.

See response to no. 1, above.

INTERROGATORY NO. 3. Please state fully what knowledge or information you now have about supervisors or departments referring cases involving discipline to the Mediation Coordinator but declining to proceed with mediation. Please explain and include in your response your understanding of the seriousness and extent of the practice of declining or rejecting mediation prior to consideration of the matter by the Mediation Coordinator, the appropriateness and propriety of refusing or rejecting mediation, your knowledge of the practice of specific departments, and your understanding, knowledge, and recollection of prior actions and proposals for eliminating the problem by you or your predecessors.

ANSWER: - I have no specific knowledge or information concerning this interrogatory. Information from the mediation coordinator discloses:

A 2004 review of the Employee Mediation Program illustrated that 71% of the City's Departments utilized the Employee Mediation Program that year. Further review indicated that seven departments rejected mediation prior to the ADR Division review in over 50% of the cases referred to the Employee Mediation Program.

The ADR Division recognizes that not all Departments had cases to refer to the Employee Mediation Program in 2004. The ADR Coordinator is currently meeting with all Department Directors to assess reasons behind Department's not utilizing the Employee Mediation Program, as well as, the reasons for declining to participate in the mediation process. Facilitation of communication to understand ADR needs will enable the ADR Division to position services appropriately based upon fact based requirements.

INTERROGATORY NO. 4. Please state fully what knowledge or information you have about the City's selection, appointment, and contracting with Personnel Hearing Officers since January 1, 1995. Please explain and include in your response your understanding of your role in the process, state the criteria you use for decisions about the Hearing Officers, provide any information you have regarding the policy, process, and practice of selecting Personnel Hearing Officers, and state your opinion about the legality and propriety of the selection process.

ANSWER: See Merit System Ordinance, Section 3-1-26 attached for Defendant Lewis' role, criteria used. See response to request for production no. 11.

- - - I have no specific role in the selection process. I am required to sign the contracts with hearing officers, but that is a ministerial duty. I have no opinion regarding the legality and propriety of the selection process and rely on the City attorney to bring any issues to my attention.

INTERROGATORY NO. 5. Please identify each and every audit or other report or other memoranda, correspondence, communications, or other records concerning the City's Merit System and the validity, integrity, or effectiveness of the City's personnel management processes, including specific information and the identity of any employees, officials or other persons involved in evaluating or appraising the Merit System or the management and administration of the City's system of personnel management.

ANSWER: Audit report no. 01-125 is attached.

I am not aware of any other responsive information. If plaintiff will identify specific documents which they contend are responsive, I will review those documents to determine if I have reviewed them previously or taken any action in response.

INTERROGATORY NO. 6. Please identify the City's present ordinances, rules, regulations, policies, guidelines, administrative instructions, and practices concerning the administration and management of the City's Merit System of personnel management and identify any such ordinances, rules, regulations, policies, guidelines, instructions or practices that you are aware of that are being violated, not adhered to, or ignored. To the extent possible please identify the person(s) responsible for violating, not complying with, or ignoring any such rules, regulations, etc.

ANSWER: Merit System Ordinance section 3-1 and Personnel Rules and Regulations section 900 are used concerning the administration and management of the City's Merit System, administrative instructions or personnel issues. Defendant Lewis is unaware of any ordinances, rules, regulations, policies, guidelines, instructions or practices that are being violated.

INTERROGATORY NO. 7. Please state whether have ever reviewed the operations of the City's Personnel Board, its Personnel Hearing Officers, or the City's Human Resources Department with respect to the administration and management of the City's system of personnel management and/or the Merit System Ordinance. If you have reviewed any such matters, please state when you did so and state fully what information was brought to your attention or was known to you about compliance with the Merit System Ordinance or the City's rules, regulations, policies, etc. If you did not review any aspect of the City's merit system or personnel management, please state why not, and identify any person you know of who did review the City's personnel management system, provide the dates of any such reviews, and identify any report, correspondence or other record or document on the subject.

ANSWER: Defendant Lewis has reviewed the operations of the City's personnel board, the personnel hearing officers and the Human Resources Department. Defendant Lewis is unable to remember the exact dates of these reviews and all appeared to be in compliance. See also audit report.

INTERROGATORY NO. 8. Please identify any document, record, memo, correspondence, e-mail, or other communication between, among, to, or from you or anyone in your office or to or from the Mayor or anyone in his office concerning the City's Personnel Board, the Merit System Ordinance, or the handling of employee grievances of disciplinary matters since January 1, 1998.

ANSWER: The only information concerning the personnel board contained within Defendant Lewis' office are the findings of the personnel board which are available for copying and inspection.

Under the Ordinance and as of the date of this response, I review the recommendations for hearings and sign those I believe to be appropriate. I do not have personal knowledge of how the system operated prior to my tenure.

INTERROGATORY NO. 9. Please identify and give the date, form, location, and content of each and every contact or communication you had with Mayor Chavez about problems or concerns over management and operation of the Personnel Board or the City's personnel grievance hearing process. Please also describe your understanding or knowledge about the Mayor's knowledge or opinion of any problems concerning the system of personnel management, the hearing process, the Personnel Board, or the City's employee relations process, stating the basis or reason for your information, understandings, or opinions.

ANSWER: Defendant Lewis does not specifically recall any such contact with
 --- Mayor Chavez:-----

INTERROGATORY NO. 10. Please identify and describe with specificity the names, dates of service and dates of replacement of Personnel Board members and Chairpersons between 1996 and the present. For each instance in which the exact time frame for such appointments set out in the Merit System Ordinance was not followed, please identify and explain the departure from the provisions set out in the ordinance and identify the dates and persons responsible for not complying with the ordinance.

ANSWER: See documents attached to Request for Production no. 3.

INTERROGATORY NO. 11. Please state and discuss your knowledge of the Writ of Mandamus issued on March 8, 2002, ordering the City to promptly reestablish its Personnel Board. Please identify 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: The Writ of Mandamus was issued prior to my becoming CAO and I have no knowledge of the Writ of Mandamus except for its content itself.

I have been briefed on the issues in the Writ of Mandamus.

INTERROGATORY NO. 12. 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. Please discuss your role and the role of your administrative predecessors in each such selection process.

ANSWER: See response to interrogatory no. 4.

I am not personally involved in the selection process.

INTERROGATORY NO. 13. 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.

ANSWER: Plaintiff may review request for proposal records for information regarding the personnel board selection process 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.

See response to Interrogatory No. 6.

INTERROGATORY NO. 14. Please state your awareness and knowledge of the statements made to the City Personnel Board on November 20, 2002, by NMTU's representatives Bob Schwartz and Robert Gutierrez, as well as any subsequent statement to the Personnel Board made by Mr. Gutierrez or Paul Livingston concerning the City's administration of the Personnel Board, the Merit System and the City's personnel hearing and grievance process. Please describe any effort, attempt, or action to correct any of the problems brought to the Board's attention, and identify any document or record concerning any such effort or attempt and identify any person involved or participating in the action, communication, or correspondence.

ANSWER: Defendant Lewis does not have personal knowledge of the statements.

INTERROGATORY NO. 15. 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, and for each such person please state the date of each disciplinary action, supervisor taking the action; the date of your approval or consideration of the disciplinary action; the date of referral (if any) to the Mediation Coordinator; provide a statement of the reason for imposing discipline, and state the type and length of discipline imposed.

ANSWER: Defendant Lewis has no personal knowledge of this interrogatory.

Responsive information has been produced in response to the

interrogatories and requests for production.

INTERROGATORY NO. 16. 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 determination by a supervisor that mediation is declined, and exclusion of mediation in drug testing, insubordination and/or violence in the workplace cases. State when and by whom such policies and practices were formulated. identify each and every person involved in suggesting, formulating, promulgating, or administering such policies and practices, provide specific dates, and identify each and every record or document evidencing any such policy or practice(s). Please include but do not limit your response to the considerations and actions taken in response to the Personnel Board's letter to you dated January 20, 2005 regarding "Review of Grievances by City Employee Mediation Program."

ANSWER: I have no specific knowledge or information concerning this interrogatory. Information from the mediation coordinator discloses:

The City of Albuquerque Legal Department's ADR Division maintains 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. However, these classifications are not exclusionary.

INTERROGATORY NO. 17. Please list and describe any effort, attempt, or action to "hire or appoint an officer to administer the merit system," in accordance with the provisions of the City Charter. Please give your opinion of the legality and propriety of delegating the responsibility for overseeing the merit system to you, including but not limiting your response to your opinion of how well you are managing the job, whether you have sufficient time and resources, and whether hiring or appointing some other officer to administer the merit system" would be beneficial.

ANSWER: The Mayor appoints the chief Administration Officer (CAO) to administer the merit system.

No separate effort has been made to hire an additional individual to administer the merit system. I have no opinion regarding the legality or propriety of delegating the responsibility for overseeing the merit system to me. I rely on the advice of the City attorney and employee relations and perform the duties assigned to me by the mayor. The Merit System assigns certain responsibilities of administering certain personnel matters to the director of Human Resources, whom I rely upon to perform her assigned duties.

INTERROGATORY NO. 18. 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 enforcement of the Merit System Ordinance. Please state your opinion about the allocation of budgetary resources to support of the merit system and personnel management and hearing process and identify any actions taken by you or others that you know about to improve the personnel management system giving the dates and identity of the persons involved in any such efforts and actions.

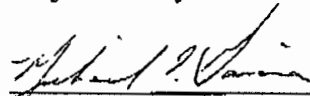
ANSWER: Defendant City has not yet received this information from responsible departments. When the information is received, this interrogatory will be supplemented. See also Answer to Interrogatory No. 17.

INTERROGATORY NO. 19. Please state whether and when you became aware of the initial Complaint and/or the filing of the First Amended Complaint in this case seeking "relief for failure to maintain a merit system." Please describe any inquiry or action taken in response to or in an effort or attempt to alleviate any of the problems or concerns addressed in the Complaint and/or the Amended Complaint in this matter, identifying any and all persons involved or participating in those actions or efforts and any documents, records, correspondence or other materials concerning actions or inquiries in response to the Complaint or First Amended Complaint.

ANSWER: Defendant Lewis objects to this interrogatory as protected by the attorney/client privilege and as attorney work-product.

Because I was not in my current position at the time this case was filed, I had no personal knowledge of it and did not take any action in response.

Respectfully submitted,
CITY OF ALBUQUERQUE
Robert M. White
City Attorney



Paula I. Forney
Assistant City Attorney
Attorney for The City
P. O. Box 2248
Albuquerque, New Mexico 87103
(505) 768-4500