

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

ENDORSED
FILED IN MY OFFICE THIS

AUG 18 2005

Quantita M. Duan
CLERK DISTRICT COURT

MELISSA CAVALIER

No. CV-2003-2215

**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,

JOINT MOTION TO BIFURCATE

COME NOW the parties to this action, Plaintiffs New Mexico Transportation Union and City of Albuquerque Defendants, and jointly move to bifurcate the proceedings and trial into two parts: 1) undisputed factual and equitable issues to be heard and decided by the Court at a bench trial on September 6 and 7, 2005; and 2) disputed factual issues, legal issues, and damages to be decided by a jury at a later date, if such proceedings are still necessary to resolve the case, stating as grounds therefore:

1. Plaintiffs and Defendants have agreed that most or all of the factual allegations will be resolved by stipulations of the parties.

2. Plaintiffs' claims and Defendants' defenses, with the exception of Count 8 (due process violations) and Count 9 (breach of employment contract) are matters subject to determination by the court under its equitable jurisdiction.

3. Although declaratory and injunctive relief were sought in the First Amended Complaint, the parties have agreed to a Second Amended Complaint which adds a claim for relief under the New Mexico Declaratory Judgment Act.

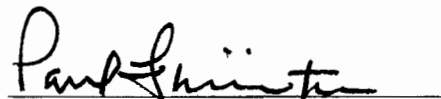
4. Presentation of the issues to the Court at a bench trial, with reservation of the right to a jury trial if necessary, will preserve judicial resources and protect the rights and interests of the parties and the public.

5. The relief sought in this motion is well within the lawful jurisdiction and discretion of the Court.

6. A form of Order, agreed upon by the parties, accompanies this motion.

WHEREFORE, Plaintiffs and Defendants jointly move to bifurcate the proceedings in this case into two parts: one part, including all claims for declaratory, injunctive and equitable relief to be heard and decided first by the Court on September 6 and 7, 2005; and the second part, including any and all remaining legal issues, to be presented to a jury, if necessary, at a later time.

Respectfully submitted,



Paul Livingston
Attorney for Plaintiffs
P.O. Box 250
Placitas, N.M. 87043
(505) 771-4000

and

approved 8/18/05 see attached

Michael I. Garcia
Assistant City Attorney
P.O. Box 2248
Albuquerque, N.M. 87103
(505) 768-4500



City of Albuquerque

Legal Department

P.O. Box 2248 Albuquerque, NM 87103

Robert M. White, City Attorney
(505) 768-4500 ☐☐ Fax (505) 768-4440

August 18, 2005

BY FAX AND MAIL

Paul Livingston
Attorney at Law
P. O. Box 250
Placitas, NM 87043

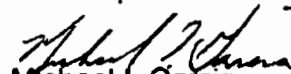
Re: NMTU v. City of Albuquerque, CV 03-2215

Dear Mr. Livingston:

I received your fax related to the Motion and Order to Bifurcate, as well as your Proposed Second Amended Complaint. You have my concurrence for filing on all points.

Thank you for putting them together.

Sincerely,


Michael I. Garcia
Assistant City Attorney

MIG/pam