

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

PAUL SALAZAR,

Plaintiff,

vs.

No. CIV-10-0645 RLP/LGF

**CITY OF ALBUQUERQUE,
RICHARD BERRY, Mayor,
DAVID CAMPBELL, Chief Administrative Officer,
MARTIN CHAVEZ, former Mayor,
EUGENE MOSER, Director of Human Resources,
GREG PAYNE, former Transit Dept. Director,**

Defendants.

**FIRST AMENDED COMPLAINT FOR VIOLATION OF STATUTORY,
CONTRACTUAL, AND CONSTITUTIONAL RIGHTS**

Plaintiff, Paul Salazar, presents the following Complaint for violation of civil and constitutional rights, seeking declaratory, compensatory, injunctive, and exemplary relief, stating as grounds therefore:

1. Plaintiff **Paul Salazar** is a resident of Belen, Valencia County, New Mexico, who was employed as a City of Albuquerque Motor Coach Operator (bus driver) until the City terminated his employment on July 9, 2007.

2. Defendant **Richard Berry** is the present Mayor of the City of Albuquerque; Mayor Berry is sued in both his official and individual capacities.

3. Defendant **David Campbell** is the Chief Administrative Officer of the City of Albuquerque; Mr. Campbell is sued in both his official and individual capacities.

David Campbell is a New Mexico attorney.

4. Defendant **Martin Chavez** is the former Mayor of the City of Albuquerque; Mr. Chavez is a New Mexico attorney. Martin Chavez is sued in both his official and individual capacities.

5. Defendant **Eugene Moser** is the Director of the City of Albuquerque's Human Resources Department, the Director of Employee Relations, and the Director of Labor Relations; Mr. Moser is sued in both his official and individual capacities.

6. Defendant **Greg Payne** is the former Director of the City's Transit Department; Mr. Payne is a former City Councillor and State Legislator. Greg Payne is sued in his official and individual capacities.

7. The City Charter of the City of Albuquerque expressly prohibits the Mayor from any involvement in personnel matters. Article X of the City Charter establishes a "Merit System" and provides that "(e)xcept to the extent necessary for the administration of the merit system, the Mayor is prohibited from becoming involved in the hiring, promotion, demotion, or discharge of any city employee..."

8. The Court has jurisdiction over federal issues and questions pursuant to 28 U.S.C. § 1331, including but not limited to matters arising under the United States Constitution and 42 U.S.C. § 1983. The Court also has supplemental jurisdiction over Plaintiff's State law claims.

9. At all times relevant to this lawsuit, the individual Defendants acted both individually and under color of State and City law. This action arises primarily under 42 U.S.C. § 1983.

FACTUAL BACKGROUND

10. Plaintiff began working as a City bus driver on March 25, 2000; he was continuously employed until February 28, 2007, when the Transit Department placed him on leave with pay pending investigation. At the time the City placed him on leave, Mr. Salazar had a clean disciplinary record with no prior infractions in his seven years as a City bus driver.

11. Plaintiff had been accused by his ex-wife of improperly touching their 4-year-old daughter during a court-approved Father's Day weekend visitation in 2001. Mr. Salazar has at all times maintained his innocence.

12. On October 11, 2006, he pled "no contest" to the charge of attempted touching of his daughter and the Court entered its Judgment and Order of Conditional Discharge, which stated that "without adjudication of guilt" the charges against him would be dismissed "pursuant to this Conditional Discharge."

13. On February 27, 2007, a State Parole Officer delivered a letter to the Transit Department stating that "your employee, Paul Salazar, is a convicted sex offender and/or is under the supervision of the Probation-Parole Division for a sexual offense. He has been adjudicated guilty of the following crime(s): Attempted Sexual Contact of a Minor."

14. In fact, the Judgment and Sentence in Mr. Salazar's case was expressly entered "without adjudication of guilt" and the charges against him were subsequently dismissed.

15. Nonetheless, on July 9, 2007, categorizing him as “a convicted sex offender,” the City, Mayor Chavez, and Mr. Payne terminated Plaintiff’s employment with the City of Albuquerque.

16. Plaintiff filed an appeal of his termination, and on June 11, 2008, after a three-day evidentiary hearing, the City Personnel Board ordered the City to reinstate Mr. Salazar as a bus driver with back pay and benefits. The Personnel Board also ordered that the record of Mr. Salazar’s purported disciplinary infraction be expunged.

17. Instead of reinstating Plaintiff or paying his back wages, Defendants Greg Payne and Martin Chavez publicly and repeatedly called Mr. Salazar a “sex offender” and a “child molester” and announced that they would refuse to reinstate Mr. Salazar as the City Personnel Board ordered.

18. Mayor Chavez informed the Albuquerque Journal on June 17, 2008, that “he plans to appeal the personnel board’s ruling. If he loses, Chavez said, he will take the matter to court. ‘This guy is not going to be around kids. Not while I am mayor,’ Chavez said. ‘This is outrageous. What parent wants their kid on a bus with someone like that?’” Albuquerque Journal, “City Must Rehire Sex Offender Bus Driver,” June 18, 2008.

19. Mayor Chavez also appeared on one or more “talk radio” programs where he repeatedly called Plaintiff a “child molester” and a “sex offender.” The Mayor viciously and maliciously branded Mr. Salazar as a sex offender and berated the Personnel Hearing Officer and the Personnel Board members who had ordered his reinstatement.

20. At the same time, Transit Department Director Greg Payne joined Mayor Chavez in berating the Personnel Board and attacking Mr. Salazar, calling him unfit to drive a bus that had any children as passengers. According to Payne, “There is no question if he drives a bus he will have contact with children. The public would recoil if we hired someone like this. It’s almost as if the crime didn’t happen. I don’t know how someone could reach this conclusion unless they are in a bubble and detached from reality.”

21. As he stated he would, Mayor Chavez ordered the City Legal Department to appeal the Personnel Board’s ruling to district court.

22. On January 7, 2009, Judge Valerie Huling issued a Memorandum Opinion and Order affirming the Personnel Board’s decision on due process grounds but sending the case back to the Personnel Board to determine whether the City had just cause to terminate Salazar’s employment irrespective of the ... due process violations.”

23. On August 12, 2009, the City Personnel Board again held unanimously that the City did not meet its burden of proof to demonstrate that Paul Salazar was fired for just cause and again ordered the City to reinstate Mr. Salazar to his bus driver position, pay his back pay, restore his benefits, and expunge his disciplinary record.

24. Despite the absence of any valid grounds for appeal, Mayor Chavez again appealed the Personnel Board’s decision to the Second Judicial District Court. Defendants again insisted that Mr. Salazar should not be allowed to drive a bus and have contact with any children, claiming that:

Had the Transit Department been given the opportunity, it would have presented evidence to show the number of children riding City buses; it

would have presented evidence to establish Salazar's interaction with these children. Whether Salazar committed the acts with which he was charged, the City has the obligation to prevent its bus riders from the perception that the City had retained employees with records of having plead no contest to an "attempt to commit criminal sexual (sic) of a minor."

City's Statement of Appellate Issues, Case No. D-202-CV-2009-10465, at p. 9.

25. On January 4, 2010, the City's attorney wrote to Paul Salazar's attorney:

The City has decided to reinstate Paul Salazar to a position with the City. He will need to pass the pre-employment physical and other tests associated with his return. The City will pay him back wages and any overtime wages he would have earned. The City will dismiss its appeal of the disciplinary action. I will let you know when he is to report to work.

E-mail from Paula Forney to Paul Livingston with copies to Eugene Moser, Bruce Rizzieri, and Mary L. Scott.

26. On January 28, 2010, City Director of Human Resources Eugene Moser confirmed that "Salazar will be returning as a Motor Coach Operator once he passes the requisite drug screening." The City calculated the owed back wages and produced a spreadsheet showing that as of February 12, 2010, it owed Paul Salazar \$114,713.16 in back pay.

27. Apparently incensed by the decision to reinstate Mr. Salazar and pay his back wages, former Transit Director Greg Payne again contacted the news media and stated:

I think the personnel board is absolutely crazy to say we need to bring this individual back, put him behind the wheel of a bus and give him \$100,000. That's nuts. . . . If Mayor Berry was forced to re-hire him, he should have given him a position where he's not around children.

KOB-TV-4, February 4, 2010.

28. In the same news report, Albuquerque's Chief Administrative Officer David Campbell is quoted saying that "by law, based on the personnel board's findings, the city had no choice but to rehire Salazar and pay him any lost wages.' Campbell said, 'We looked to a number of positions where he might be reinstated, but the most appropriate one for him to be reinstated to was the one he did an excellent job at, which was being a bus driver.'"

29. Plaintiff took the City's pre-employment physical exam and drug test and passed both.

30. Paul Salazar was ready, able, and happy to return to his job when Mayor Berry reversed his attorney, Human Resources Director, and Chief Administrative Officer's promises to return Paul Salazar to work.

31. On February 11, 2010, Albuquerque news media reported that:

The city of Albuquerque is challenging the reinstatement of a bus driver who was accused of molesting a child. In a statement received by The Albuquerque Journal, the Berry administration says it believes it's not in the public's best interest to allow 53-year-old Paul Salazar to drive a city bus. Officials say they could be okay with reinstating Salazar for work with the city, just not as a bus driver. The city fired Salazar back in 2007 after he didn't tell his boss about the molestation charge. The charge was eventually dropped as part of a no contest plea deal. He has been re-hired and given \$100,000 in back pay after the city said by law, based on a personnel board's findings, they had no choice but to rehire Salazar and pay him lost wages.

32. Despite City's prior promises and the news report stating that Plaintiff "has been re-hired and given \$100,000 in back pay" Paul Salazar had not been re-hired and had not been paid any back pay. Defendants continued to refuse to comply with their obliga-

tions and promises to return Mr. Salazar to work as a bus driver, pay his back wages, reinstate his benefits, and expunge his record.

33. Plaintiff filed this lawsuit on July 8, 2010. Despite the filing of this lawsuit, Defendants City of Albuquerque, Richard Berry, David Campbell, and Eugene Moser have continued their invidious misconduct, defamation, and abuse of process by requiring that Mr. Salazar drive a garbage truck or be again terminated as a City employee, but they will not return Mr. Salazar to the position he previously held as a bus driver.

34. On July 26, 2010, the Albuquerque Journal quoted City Attorney Rob Perry:

City Attorney Robert Perry said the city is trying to "remediate" the situation, which carried over from Mayor Martin Chávez's administration. "We're trying to do that with a sound policy decision," Perry said. "We're looking for different positions of similar duties and similar pay to reinstate Mr. Salazar." But not as a bus driver, he said.

"We thought basically that the best policy was not to return Mr. Salazar to his job as a bus driver. And the reasons for that is that we didn't want him subject to false accusation because of this situation and circumstances that involve it not being good for him as it relates to his safety and false accusation," Perry said.

He also called it an untenable situation for the city: "for our ridership, for our confidence in the integrity of our transit system and the employees."

Even though Salazar wasn't "adjudicated guilty," Perry said, the mere accusation causes potential problems and liability exposure, as well.

Mayor Berry, said earlier this year, "The city believes it is not in the public's best interest that this individual be allowed to drive a city bus," and that the city was pursuing all legal options in the matter.

35. Ignoring the allegations and claims in this lawsuit, Defendants Berry, Campbell and Moser again threaten to terminate Mr. Salazar's employment on the grounds that he will not accept their ultimatum that he must either drive a garbage truck or be terminated.

36. As a result of the acts and omissions of Defendants described herein, Paul Salazar has suffered extreme and irreparable personal and financial harm and damage to his reputation, humiliation, embarrassment, and public disgrace. In addition Plaintiff is now and will in the future be unable to secure work or continue his career as a bus driver.

37. On August 30, 2010, City Human Resources Administrator Mary L. Scott ordered Mr. Salazar to take a “CDL physical in order to be returned to a driving position.” When Mr. Salazar reported to the City’s Health Clinic, he was not given a “CDL physical” but was sent for a drug test instead; he passed the drug test.

38. On September 3, 2010, Defendant Eugene Moser gave Mr. Salazar Notice of Reinstatement, stating that he had “been reinstated effective August 28, 2010 to the following position: Motorcoach Operator.”

39. On September 9, 2010, Eugene Moser wrote to Defendant David Campbell stating that “Mr. Paul Salazar is ready to return to work . . . It is recommended that Mr. Salazar be placed in the Solid Waste Department. . . .” Mr. Campbell “approved” Moser’s “recommendation.”

40. Both Eugene Moser and David Campbell were fully aware that by transferring Paul Salazar to the Solid Waste Management Department they were violating the Personnel Board’s orders returning Mr. Salazar to work as a bus driver and at the same time were continuing to assert their false and defamatory contention that allowing Mr. Salazar to drive a City bus would place children in danger of being molested by Mr. Salazar.

41. Also on September 9, 2010, Defendant David Campbell claimed that “Pursuant to Personnel Rules and Regulations Section 307.4, Administrative Transfers: The Chief Administrative Officer may transfer an employee administratively to any position within the City provided the employee is qualified.” He ordered Mr. Salazar to “report to the Solid Waste Management Department” on September 13, 2010.

42. In response, on September 13, 2010, Mr. Salazar’s attorney wrote to Mr. Campbell, with a copy to Mr. Moser, advising them that Plaintiff would not accept an “assignment” as a garbage truck driver, reminding them that David Campbell had previously stated on KOB -TV that he had:

looked to a number of positions where he might be reinstated, but the most appropriate one for him to be reinstated to was the one he did an excellent job at, which was being a bus driver.

43. Mr. Salazar’s refusal to work as a garbage truck driver is based on the Defendants’ defamatory intent, the contrary orders of the City Personnel Board, and the fact that Mr. Salazar was a *bus* driver, not a *truck* driver. It is significant that Defendants never *asked* Mr. Salazar if he would accept work as a truck driver, but simply ordered him to report to the SWMD under threat of termination (again).

44. Again ignoring both counsel’s letter and all the prior acts and occurrences, Mr. Moser wrote on September 13, 2010, that Mr. Salazar was “required to appear at the Solid Waste Management Department by Wednesday, September 15, 2010, at 7:00 a.m.” and that “If you again fail to report, you will be disciplined. Discipline can include

termination.” This letter was posted by the City on the door of Paul Salazar’s residence in Belen, New Mexico.

45. Mr. Salazar’s attorney responded again to David Campbell and Eugene Moser, stating in part that:

You seem to not care that you previously promised to return Paul to work as a Motor Coach Operator, that Paul Salazar knows nothing about driving a garbage truck and doesn’t want to be a truck driver, or that Paul Salazar’s pending civil rights lawsuit addresses the City’s defamatory contentions that Paul should not be allowed to drive a bus because it would endanger the children who ride on his bus. The fact that the City’s contentions in that regard are ridiculous make them no less defamatory.

46. On September 17, 2010, Defendants sent Mr. Salazar an “Interoffice Memorandum” giving “Notice of Pre-Determination Hearing” charging him with violations of City Personnel Rules and Regulations: Section 301.1 (Duty to the Public); Section 301.2 (Professional Excellence); Section 301.3 (Standards of Conduct); Section 302 (Regular Work Hours); Section 803 (Automatic Resignation); and Section 902.1 (Reasons for Disciplinary Action C (Incompetence), E (Insubordination), J (Absent from Duty without Authorization), M-1 (Other disciplinary reasons calling into question the employee’s ability to perform assigned duties or job functions), and M-3, Other disciplinary reasons that would impair the operation or efficiency of any City department).

47. The City scheduled a “Pre-Determination Hearing” on those charges for September 23, 2010, at 2:00 p.m.

48. On September 20, 2010, the City sent a “Revised Notice of Pre-Determination Hearing” adding the charge that Mr. Salazar violated Section 402.5, Absence Without Authorized Leave.” A copy of that “Revised Notice” is attached hereto.

49. The City’s “Hearing Officer” for the charges against Mr. Salazar, Ismael Montanez, Assistant Superintendent, HR, had been a witness for the Transit Department against Mr. Salazar in the post-termination hearing in 2008.

CAUSES OF ACTION

Based on the facts and factual allegations set out above, Plaintiff states his claims:

COUNT 1

VIOLATION OF RIGHT TO PROCEDURAL DUE PROCESS

50. The allegations in the preceding paragraphs are incorporated as if fully set out herein.

51. As a tenured, classified public employee, Plaintiff had a protected property interest in his employment and his employment could not be terminated without just cause.

52. By their acts and omissions described herein, Defendants have denied Mr. Salazar’s right to procedural due process by terminating his employment wrongfully and without just cause and by refusing to comply with the orders of the City’s own Personnel Board to reinstate Mr. Salazar.

53. The Defendants’ disregard and derogation of the City’s merit system, including its Personnel Hearing Officer and its Personnel Board and its members, and its appeals to the district court, denied Plaintiff’s due process right to a meaningful hearing

and the benefit of prevailing on the disciplinary charges against him, demeaned the City's provisions for affording its employees due process of law, and denied and publicly denounced Plaintiff's right to a hearing to clear his name and restore his reputation and integrity.

54. Defendants have violated Mr. Salazar's right to procedural due process and are liable to Mr. Salazar for damages proximately caused by their violation of his right to procedural due process.

COUNT 2

VIOLATION OF RIGHT TO SUBSTANTIVE DUE PROCESS

55. The allegations in the preceding paragraphs are incorporated as if fully set out herein.

56. In addition to his property interest in his employment with the City, Paul Salazar had a protected liberty interest in his work and his career as a bus driver.

57. By asserting and reasserting stigmatizing claims of misconduct, immorality, and illegality of a kind that effectively limits or precludes other employment, the Defendants have violated and continue to violate Mr. Salazar's right to substantive due process of law.

58. Defendants lack any evidence to support their invidious and untruthful public insistence that if Paul Salazar was driving a City bus there was a risk he would commit sex offenses against children who rode on his bus.

59. Defendants' placement of Mr. Salazar in a truck driving position was in direct and knowing violation of the Personnel Board's Order to reinstate him as a bus driver.

60. The City continues to improperly use its Merit System and disciplinary process to accuse and defame Mr. Salazar. The contention that Mr. Salazar has violated numerous City rules by not reporting for work as a truck driver is a pretext for refusing to reinstate him as a bus driver and again terminating his employment because he is a sex offender and a child molester.

61. Defendants' abuse of power and defamatory actions against Paul Salazar will shock the conscience of the court and meet the U.S. Supreme Court's "stigma plus" test for violations of substantive due process rights.

62. Defendants are liable to Paul Salazar for damages proximately caused by their violation of his right to substantive due process.

COUNT 3

DEFAMATION PER SE

63. The allegations in the preceding paragraphs are incorporated as if fully set out herein.

64. Defendants Martin Chavez, Richard Berry, and Greg Payne have repeatedly made and disseminated harmful and untrue statements, including but not limited to contentions that Mr. Salazar is and was a "child molester," a "sex offender," and a person

who cannot be trusted to be around children, all intending to cause harm and damage to Mr. Salazar.

65. Paul Salazar specifically denies that he is a child molester, a convicted sex offender or a sex offender of any kind, a pedophile, or a person who poses any threat, sexual or otherwise, to any child or other person.

66. Defendants' statements on the radio, on television, and in the newspapers were untrue, unprivileged, offensive, and highly damaging.

67. Plaintiff has a fundamental right to privacy which Defendants deliberately breached by knowingly making false public statements about him and the danger and risk to children he purportedly posed.

68. The City Charter's prohibition on mayoral involvement in personnel matters prohibited Mayor Chavez and Mayor Berry from making any statements at all concerning the termination or placement of Paul Salazar.

69. Defendants are liable for their false and defamatory statements and are liable for damages proximately caused by their willful and malicious conduct.

COUNT 4

MALICIOUS ABUSE OF PROCESS

70. The allegations in the preceding paragraphs are incorporated as if fully set out herein.

71. The City and the Mayor lack statutory authority to appeal the decision of the City Personnel Board.

72. Defendants have used their “appeals” to the State district court to delay and deny Mr. Salazar’s right to substantive and procedural due process and to further defame Mr. Salazar, purposes not intended by the rule and process of administrative appeals.

73. Defendants’ insistence on publicly charging Mr. Salazar with additional offenses is pretextual, unsupported by any evidence, and highly prejudicial

74. By their acts and omissions described herein, Defendants have engaged in the malicious abuse of process, as set out and defined in the law of New Mexico, and are liable for damages proximately resulting from their conduct.

COUNT 5

BREACH OF EMPLOYMENT CONTRACT AND DUTY OF GOOD FAITH AND FAIR DEALING

75. The allegations in the preceding paragraphs are incorporated as if fully set out herein.

76. As a tenured and classified public employee, Plaintiff’s employment was governed by an express and implied contract of employment and a duty of good faith and fair dealing that accompanies that contract.

77. Pursuant to his employment contract, Mr. Salazar was entitled to a fair hearing before a Personnel Hearing Officer, and once that hearing had been held and a decision rendered the City was required to comply with the final orders of its Personnel Board.

78. Both Mayor Berry and Mayor Chavez were prohibited by the City Charter from involvement in personnel matters, yet both mayors made invidious statements and comments defaming Paul Salazar, demeaning the effect of the Personnel Board's written decisions, and vowing to continue their futile litigation and appeals.

79. By ignoring or overriding the City Charter, Merit System Ordinance and City Rules and Regulations provisions concerning employee rights and disciplinary actions and arrogating to themselves the ability to do or say whatever they wanted, Defendants breached their obligations to the City, the public, and Paul Salazar.

80. Without just cause or other reasonable justification Defendants have repeatedly violated the employment contract, the Merit System Ordinance, the Personnel Board's orders, and other agreements and promises and Plaintiff is entitled to damages proximately resulting from Defendants' breach of contract, agreements, and promises.

81. By their acts and omissions described herein, Defendants have violated their duty of good faith and fair dealing.

COUNT 6

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

82. The allegations in the preceding paragraphs are incorporated as if fully set out herein.

83. By their conduct described herein Defendants have engaged in conduct so outrageous in character, and so extreme in degree, as to be beyond all possible bounds of

decency. Defendants' conduct in falsely accusing and publicly defaming Paul Salazar are such as to be regarded as atrocious and utterly intolerable in a civilized community.

84. Defendants' false statements branding Paul Salazar as a sex offender and a child molester who is incapable of driving a City bus without threatening the safety of children has inflicted extensive and severe emotional distress and damage.

85. Defendants are liable for the damages proximately caused and resulting from their intentional infliction of emotional distress.

COUNT 7

CIVIL CONSPIRACY

86. The allegations in the preceding paragraphs are incorporated as if fully set out herein.

87. Defendants and other City employees, officials, and agents have met, planned, communicated, and conspired with one another to preclude Paul Salazar's return to work as a City bus driver.

88. Among the conspirators against Paul Salazar and his lawful reinstatement in accordance with the orders of the Personnel Board are Defendants Richard Berry, David Campbell, and Eugene Moser, as well as Selinda Guerrero, Ismael Montanez, John Soladay, Bruce Rizzieri, Mary Scott, and Robert Perry.

89. These persons, collectively and in various combinations, have agreed upon and attempted to carry out their past, present, and on-going scheme to transfer Paul Salazar

to a truck driving position or terminate his employment rather than follow the orders of the Personnel Board and reinstate him to his position as a bus driver.

90. The formulation and implementation of the conspirators' invidious plan has been taking place over at least the past year, with recent activity intended to again culminate in the termination of Mr. Salazar's employment in the immediate future.

91. Defendants are liable for damages proximately resulting from their unlawful and conspiratorial efforts to deny Paul Salazar of his lawful employment, pay, benefits, and career as a bus driver.

COUNT 8

PUNITIVE DAMAGES

92. The allegations in the preceding paragraphs are incorporated as if fully set out herein.

93. As more fully described herein, the individual Defendants have acted intentionally, willfully, maliciously, and with utter disregard for the truth and the damage to Paul Salazar caused by their misconduct and continuing false defamatory statements and actions.

94. Plaintiff is entitled to an award of punitive and exemplary damages in the amount of no less than \$1,000,000.00 each against Richard Berry, David Campbell, Eugene Moser, Martin Chavez, and Greg Payne in their individual capacities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Paul Salazar prays for the following relief:

- A. Compensatory relief for violations of legal, statutory, and constitutional rights and interests in an amount to be determined at trial.
- B. Declaratory, injunctive and equitable relief, including but not limited to reinstatement as a bus driver, expungement of the employment record, full back pay, sufficient front pay, benefits, and interest.
- C. Punitive and exemplary damages for Defendants' willful, intentional, and malicious misconduct and violations of Paul Salazar's statutory and constitutional rights.
- D. Attorney's fees and costs of this action and all related prior City appeals and City administrative proceedings.
- E. Such other and further relief as the Court deems just.

REQUEST FOR TRIAL BY JURY

Plaintiff requests trial by jury on all matters suitable for jury determination.

Respectfully submitted,

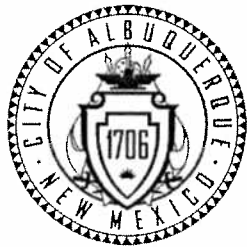
s/ Paul Livingston

Paul Livingston
Attorney for Mr. Salazar
P.O. Box 250
Placitas, NM 87043
505-771-4000

I hereby certify that I served the foregoing
First Amended Complaint on the City of
Albuquerque and Mayor Berry by facsimile
and/or e-mail attachment on or before
September 23, 2010.

s/ Paul Livingston

Paul Livingston



City of Albuquerque

Solid Waste Management Department

Richard J. Berry, Mayor

John Soladay, Director

Interoffice Memorandum

Date: September 20, 2010

To: Paul Salazar, Clean City Operator, SWMD

From: Ismael Montanez, Assistant Superintendent, HR. *Im*

Subject: REVISED NOTICE OF PRE-DETERMINATION HEARING

A. Pre-Determination Hearing Scheduling Details

A pre-determination hearing is scheduled for Thursday, September 23, 2010, at 2:00 pm., with Ismael Montanez, Assistant Superintendent, HR at 4600 Edith N.E., Albuquerque, New Mexico. The purpose of this hearing is to provide you with an opportunity to respond to allegations that you violated the City of Albuquerque Personnel Rules and Regulations, set forth below. This pre-determination hearing may result in disciplinary action up to and including termination. In determining discipline, your entire work history may be considered.

You have the right to have a representative present at the hearing and it is your responsibility to make these arrangements or you may choose not to attend the hearing and respond in writing prior to the date of the scheduled hearing.

B. Description of Allegation

It is alleged that you failed to appear for work on September 13, 2010, September 14, 2010 and September 15, 2010. You were given a notice of reinstatement to your position as a Motor Coach Operator on September 9, 2010. On September 9, 2010, you were transferred to a position with the Solid Waste Management Department, advised to report for work on September 13, 2010 at 7:00 a.m., and notified of the increase in your salary of \$3.51 per hour. You were notified that you had been placed on paid administrative leave upon your reinstatement effective August 28, 2010, through September 13, 2010 the date that you were required to report to SWMD to begin work as a Clean City Operator and to report to Acting Superintendent Marco Holloway. Copies of these documents were e-mailed to your attorney.

On September 10, 2010, you enrolled in the City of Albuquerque's insurance program.

On September 13, 2010, you failed to appear for work at either SWMD or at the Transit Department. You failed to call Acting Superintendent, Marco Holloway, SWMD or any other supervisor or manager of the City of Albuquerque.

On September 14, 2010, you again failed to appear for your job. You failed to call Acting Superintendent, Marco Holloway, SWMD or any other supervisor or manager of the City of Albuquerque.

On September 14, 2010, the City hand-delivered to your home in Belen, 716 Vivian, a memorandum notifying you to appear for work on September 15, 2010 or you could be subject to discipline up to termination. Copies of these documents were e-mailed to your attorney. On September 15, 2010, you failed to appear for work at either SWMD or at the Transit Department. You failed to call Acting Superintendent, Marco Holloway or any other supervisor or manager of the City of Albuquerque.

C. Policy Violations

The alleged violations of City Personnel Rules and Regulations at issue include:

1. Section 301.1 Duty to the Public
2. Section 301.2 Professional Excellence
3. Section 301.3 Standards of Conduct
4. Section 302 Regular Work Hours
5. *Section 402.5 Absence Without Authorized Leave*
6. Section 803 Automatic Resignation
7. Section 902.1 Reasons for Disciplinary Action [C, E, J, M-1, M3]

301.1 Duty to the Public

The City of Albuquerque is a service institution. In carrying out their assigned duties and responsibilities, employees must always remember their first obligation is to the general public. This obligation must be carried out within the framework of federal, state and local laws.

301.2 Professional Excellence

Employees are encouraged to strive for personal and professional excellence as a means of keeping current on relevant issues and administering the public's business with professional efficiency and effectiveness.

301.3 Standards of Conduct

Which states in part: Employees shall in all instances maintain their conduct at the highest personal and professional standards in order to promote public confidence and trust in the City and public institutions and in a manner that merits the respect and cooperation of co-workers and the community.

302. Regular work hours

Employees will perform their work in a responsible manner, observing scheduled work hours and comply with City policy governing paid and unpaid leave of

absence. Employees are further responsible for comply with City policy concerning sick and vacation leave usage.

The department director shall specify the working time of their employees.

402.5 Section 402.5 Absence Without Authorized Leave

An employee who is absent for work without prior approval of the supervise will be considered absence without authorized leave. Such leave will be subject to disciplinary action up to and including termination.

803. Automatic resignation

Unauthorized absence from work for a period of three (3) consecutive regularly scheduled work shifts or three (3) consecutive work days, whichever is greater, may be considered an automatic resignation.

Such automatic resignation is not the subject of a grievance but shall be subject to pre-disciplinary procedures.

902.1 Reasons for Disciplinary Actions

Employees may be reprimanded, suspended, demoted or terminated for any justifiable cause including, but not limited to:

- C. Incompetence, inefficiency or inadequate performance of an employee's duties;
- E. Insubordination or uncooperative behavior;
- J. Being absent from duty without proper authorization, regardless of the length of time;
- M. Other disciplinary reasons, including but not limited to conduct on or off-duty, which may:
 - 1. Call into question the employee's ability to perform assigned duties or job functions;
 - 3. Would impair the operation or efficiency of any City department."

Only relevant policy sections are cited in this notice of hearing. As always, if you have any questions on a policy or procedures please contact management.

E. Referral to the Mediation Coordinator

In accordance with the provisions of Section 902.2 of the Personnel Rules, this matter will be referred to the mediation coordinator for review. The mediation coordinator will inform the parties if the matter deemed appropriate for mediation, prior to the scheduled time of the pre-determination hearing.

Employee's Signature

Date

Witness Signature

(Use only if the employee declines to sign)

Date

Xc: John Soloday, Director, Solid Waste Management Department
Theresa Torrez, Personnel Officer, SWMD
Ismael Montanez Human Resource Coordinator
Department File/Personnel File