



CITY OF ALBUQUERQUE

CITY LABOR-MANAGEMENT RELATIONS BOARD

MONDAY, NOVEMBER 6, 2023

MEMBERS PRESENT:

*Chairman Ted Baca
Juan Montoya
Bruce Perlman*

OTHERS PRESENT:

*Nichole Maher
Paul Broome
Fred Mowrer
Eason Eige
Leigh Brunner
Bernadine Hernandez
Arnold Puentes
Jessica Serrano
Victoria Gammill
Felix Lucero
Mary Weise
Vicente Telles
Casey Padilla
Cora Romo
Tina Kachele (zoom)*

*Kate Furek
Louis Sisneros
Ian Stoker
Augustine Romero
Joel Villarreal
J. Luebbers
Autumn Chacon
Catherine Gonzalez
Haley English
Shelle Sanchez
Julie King
Michael Dorin
Barbara (illegible last name)
Matthew Cohen (zoom)*

MINUTES

I. CALL TO ORDER.

Chairman Baca called the meeting to order at 9:03 a.m.

II. REVIEW AND APPROVAL OF AGENDA FOR MONDAY, NOVEMBER 6, 2023.

Mr. Perlman motioned to approve. Mr. Montoya seconded. Voted and passed 3-0.

III. REVIEW AND APPROVAL OF MINUTES FOR MONDAY, OCTOBER 16, 2023.

Mr. Montoya motioned to approve. Chairman Baca seconded. Voted and passed 3-0.

IV. PUBLIC COMMENTS *Limited to three (3) minutes total time per person.

Arnold Fuentes appeared to speak on behalf of the South Broadway Cultural Center. He stated he wanted to remind the City what a gem the facility is.

Objection by City Attorney Catherine Gonzales. She stated she believed Mr. Fuentes was presenting information about case LB 23-08's merits hearing. Chairman Baca asked Mr. Fuentes if he was testifying in that merits hearing and he answered no. Chairman Baca said Mr. Fuentes would be allowed to continue for the 3 minutes allotted per commenter.

Mr. Fuentes stated the community depends on people like Augustine Romero to help run programs. Chairman Baca asked if Mr. Fuentes was attesting to Mr. Romero's character and he answered yes. Chairman Baca stated the Board could not allow Mr. Fuentes to speak further on the matter.

Chairman Baca asked if anyone else had public comments and no one spoke. End of public comments section.

V. **PRESENTMENT AND APPROVAL OF ORDERS:**

• **LB 23-15 PROPOSED ORDER FOR UNIT CLARIFICATION**

Chairman Baca asked if both parties agreed to the order. The City said they agreed and the Union said they agreed. Chairman Baca said they would enter this order. Signed and approved.

*An audience member asked if they could make a public comment. Chairman Baca stated they had already asked if there were further comments from the public and no one came forward; that section was closed and the opportunity for public comment had passed.

VI. **MISCELLANEOUS/STATUS CONFERENCE:**

• **STATUS OF NEW MEXICO PUBLIC EMPLOYEE BARGAINING ACT (PEBA) LETTERS FROM UNIONS. THESE WERE TO BE SUBMITTED BY 11/1/23.**

Attorney Fred Mowrer said he confirmed with Leigh Brunner all the letters from the Unions were filed and confirmed. Ms. Brunner asked if two different letters needed to be sent for Local 624, or if they were acceptable as one letter. Union President Augustine Romero said one letter was considered to suffice. Ms. Brunner reported she would probably get the letter into the State earlier than the deadline and would know if they found any issues. The City said they should have their letter submitted soon. They are not sure where it is at this time, but it should be easy to obtain.

• **LB 23-19 SCREEN FOR FACIAL VALIDITY FOR PROHIBITED PRACTICE COMPLAINT FILED BY ATTORNEY FRED MOWRER ON BEHALF OF THE APOA AGAINST THE CITY OF ALBUQUERQUE POLICE DEPARTMENT, FOR FAILING TO ADHERE TO THE TERMS OF THE COLLECTIVE BARGAINING AGREEMENT BY FAILING TO UPDATE OR REPAIR THE CURRENT RADIO COMMUNICATIONS SYSTEM USED BY OFFICERS IN THE DEPARTMENT.**

Chairman Baca read over the new PPC aloud.

Attorney Fred Mowrer appeared on behalf of APOA. Assistant Attorney Kate Furek appeared on behalf of the City.

Attorney Mowrer said the Union will provide the name of the person mentioned in this PPC later in the case, to reduce the chance of retaliation.

Attorney Furek stated the PPC did not cite what part of the contract had been allegedly violated. Mr. Perlman asked for clarification from Attorney Mowrer on what was being alleged. Attorney Mowrer said there was not technically a citing in the contract that mentioned radio communication, but it does cite there must be a safe working environment, and without radio backup, you cannot reach out for backup. Mr. Perlman said he did not disagree with anything Attorney Mowrer said, but is unsure the lack of citing radio issue in the contract may cause a problem. Chairman Baca asked if Attorney Mowrer knew the provision in the contract that mentioned safety. Attorney Mowrer pointed to Section 19 and said it states working conditions must be satisfactory in regards to safety. Attorney Furek said she alleges it is a misstatement of the contract. Without a provision the City cannot properly defend the claim. Chairman Baca asked Attorney Furek if she was saying a PPC could not be filed unless it pointed to a specific provision in the contract. Attorney Furek replied she thought so; they cannot claim the entire contract has been violated due to safety.

Chairman Baca moved the Board conclude the PPC filed is facially valid. Mr. Montoya seconded. Mr. Perlman voted no. Passed 2-1. Ordered to set entry of scheduling order for 11/13/23.

• **LB 20-04/21-35 SCHEDULING CONFERENCE FOR PROHIBITED PRACTICE COMPLAINT FILED BY THE APOA AGAINST THE CITY OF ALBUQUERQUE POLICE DEPARTMENT FOR VIOLATING THE COLLECTIVE BARGAINING AGREEMENT BY FAILING TO CONDUCT A PROPER AND LEGITIMATE PROMOTION PROCESS FOR THE POSITION OF LIEUTENANT.**

Attorney Fred Mowrer appeared on behalf of the APOA. Assistant Attorney Victoria Gammill appeared on behalf of the City. Attorney Gammill stated the City had been meeting with APD to discuss settlement options and was working on finalizing it. The City asked that this be set for a hearing in the future, next year. Attorney Mowrer said the APOA asked to continue in 2022 because things had calmed down. Now that there have been new issues, he is requesting a hearing. Chairman Baca said he felt they should schedule a scheduling conference before January. Attorney Gammill said the City made revisions and they do not

believe Attorney Mowrer has had a chance to review them, but they should resolve everything. Chairman Baca said he would like a scheduling conference set for 11/27/23.

VII. MOTION HEARING:

- **LB 23-17 MOTION FOR SUMMARY JUDGEMENT HEARING ON PROHIBITED PRACTICE COMPLAINT FILED BY ALBUQUERQUE POLICE OFFICERS' ASSOCIATION BY AND THROUGH ITS ATTORNEY OF RECORD FREDERICK MOWRER ON BEHALF OF OFFICER D. ELLIS AGAINST THE CITY OF ALBUQUERQUE POLICE DEPARTMENT FOR FAILING TO ADHERE TO THE TERMS OF THE COLLECTIVE BARGAINING AGREEMENT BY NOT COMPLYING WITH THE BOARD'S ORDER REGARDING TIMELY DISCIPLINE (19-35/20-34).**

Attorney Fred Mowrer appeared on behalf of the APOA. Assistant Attorney Jessica Serrano appeared on behalf of the City. Attorney Serrano provided an overview of the motion and issues in the case. Timelines and deadlines were reviewed. Use of force investigations were reviewed, along with administrative investigations and those timelines. 20.1.16.2 was cited and discussed several times. The City asked the Board to dismiss this case with prejudice.

Attorney Mowrer stated the APOA disputes what the City states the contract means and feels it is an incorrect interpretation. Chairman Baca asked how Attorney Mowrer replies to the City's statement. Attorney Mowrer said the affidavit states that is not how the contract was to be interpreted. He said Mr. Broome can testify as to what the intent of the contract was. Chairman Baca asked the City if it resolved the issue. Attorney Serrano said intent does not matter when the language in the contract is clear. The City said the petitioner did not identify himself as a witness. Once he did, his video was reviewed and found to have violated policy. Attorney Mowrer stated the City is raising factual disputes and he is not prepared to submit those facts and witnesses at this time. The City asked that since nothing has been submitted by the APOA, this contract is not clear, therefore, there is no dispute.

Chairman Baca made a motion that the Board go into closed session pursuant to Section 10.15.1.H.3 of the Open Meetings Act, which allows for the closing of meetings for deliberation by a public body in connection with an administrative adjudicatory proceeding. Mr. Montoya seconded. A roll call vote was taken and the motion passed 3-0. Session was closed at approximately 10:01 a.m.

The Board returned to open session at approximately 10:17 a.m. The meeting had been in closed session pursuant to Section 10.15.1.H.3 of the Open Meetings Act. Chairman Baca stated the Board was in closed session to discuss and deliberate on LB 23-17 and no other matters were discussed.

Mr. Montoya moved that the Board grant the motion for summary judgement. Voted and passed 3-0.

VIII. MERITS HEARING:

- **LB 23-08 PROHIBITED PRACTICE COMPLAINT FILED BY AFSCME LOCAL 3022 ON BEHALF OF AUGUSTINE ROMERO AGAINST THE CITY OF ALBUQUERQUE DEPARTMENT OF ARTS & CULTURE, FOR VIOLATIONS OF LMRO 3-2-10 SECTIONS A1 AND A7, INCLUDING BUT NOT LIMITED TO CBA 0.4.1 RECOGNITION.**

Attorney Ian Stoker, Assistant Attorney Catherine Gonzales and City Representative Dr. Shelle Sanchez appeared on behalf of the City. Augustine Romero and Joel Villarreal appeared on behalf of the Union.

Chairman Baca called LB 23-08 to order and asked for any preliminary matters. Neither party had any matters to discuss. Attorney Gonzales stated one preliminary matter if allowed. Board said to proceed. She asked that no public comment previously made be taken into consideration in this merits hearing. Mr. Villarreal said he understood and it was not the intention of the Union to have any statements be made in a malicious manner, only as moral support for Mr. Romero, who has worked extensively with many of the individuals who spoke and were present in the hearing room.

Chairman Baca said he would start by reading the PPC filed in this case, which he did aloud. He also read the City's answer to the allegations aloud.

Mr. Villarreal made an opening statement. He reviewed that the most important right of the Union is to bargain. A job

description is a mandatory area of bargaining. He reviewed prior cases that ruled on this. The Union feels it has a very simple case. Mr. Romero found out by walking past the Kimo that a new art exhibit had been put up he was not involved in. The Union asked the Board to find the City violated the bargaining agreement. Union rested.

Attorney Stoker made an opening statement. He said the Union bared the burden of proof in this case. He spoke about the Kimo related to COVID and all the changes that happened on a large scale. He stated Mr. Romero was well aware of the City's intent to change art types, such as murals. The artists were selected by a committee that Mr. Romero sat on. The evidence will show that nothing has changed in his job. There is no causal connection between his status as a Union Representative and his job. Attorney Stoker stated most of what Mr. Villarreal raised has been resolved and is not appropriate to bring up in this case. The City asked the Board to find the Union did not meet its burden. City rested.

Union called their first witness, Augustine Romero:

Chairman Baca swore in Mr. Romero.

Mr. Villarreal asked Mr. Romero to provide his name, title, job with the City, time in the position, educational art background, and his experience with art curation, which Mr. Romero provided.

Chairman Baca asked if the City objected to any of the 11 Union exhibits. The City said yes, they object to Exhibits 1, 4, 5, 6, 7, 8, 10 and 11. Mr. Villarreal said the City's exhibit I can be used in leu of their exhibit 1, which is an incomplete job description. The Board admitted Union's Exhibits 2, 3, and 9 and the City's exhibit I into evidence.

Mr. Villarreal reviewed Exhibit I with Mr. Romero and discussed his duties in the curator position. Duties that have allegedly been taken away from Mr. Romero in his job were discussed. An art instillation put up in the gallery that Mr. Romero had no part in was discussed. Union's exhibits 2 and 3 were discussed. Exhibit 3, was reviewed. This is a photo Mr. Romero took of the Kimo. He said for confirmation this is not a mural, they are paintings. Exhibit 2, the image of the artist's statement was discussed. Events occurring after this event were discussed. Mr. Romero said he did not recall exactly whom he spoke with after this, before filing the PPC.

Mr. Villarreal asked Mr. Romero to discuss the claims in the PPC that were filed.

Attorney Gonzales objected for lack of foundation since these claims are years old. Chairman Baca said the Union needed to lay a foundation. Mr. Villarreal stated LB 20-31 names Mr. Romero in a claim involving the issues at hand. The agreement made with the City is not being honored. The Union is trying to show this is a pattern of behavior on the City's part. This is needed to show those things. LB 21-74 also included Mr. Romero. The City said these do not show a pattern of behavior or retaliation against Mr. Romero because he was not the Union President until 2 years ago. Chairman Baca asked Mr. Villarreal to clarify what is being alleged. Mr. Villarreal said Mr. Romero was part of the Union.

Chairman Baca made a motion that the Board go into closed session pursuant to Section 10.15.1.H.3 of the Open Meetings Act, which allows for the closing of meetings for deliberation by a public body in connection with an administrative adjudicatory proceeding. Mr. Perlman seconded. A roll call vote was taken and the motion passed 3-0. Session was closed at approximately 11:24 a.m.

The Board returned to open session at approximately 11:37 a.m. The meeting had been in closed session pursuant to Section 10.15.1.H.3 of the Open Meetings Act. Chairman Baca stated the Board was in closed session to discuss and deliberate on LB 23-08 and no other matters were discussed.

Chairman Baca went on to say; to provide some guidance by the board, because a prior action was filed, it does not prove something occurred. It cannot be used as proof. Allegations cannot be used to prove the claims since they have not been adjudicated. Going forward, they will only be accepted for the fact that they were filed. Mr. Villarreal said he understood.

Mr. Villarreal spoke with Mr. Romero about his Union involvement and roles. In regards to the March 31 art display, Mr. Romero was not involved in its selection. He was not notified as an employee or as the Union president that his job duties would be changed. Union rested.

Attorney Gonzales asked if Mr. Romero was listed as being the curator of the Kimo and South Broadway Cultural Center. Mr. Romero said it was implied. Attorney Gonzales asked if it was true the Kimo Theater would no longer be open to the public. Mr. Romero said that was correct. Attorney Gonzales asked if the art was accessible to the public if the concessions area was closed. Attorney Gonzales discussed with Mr. Romero his involvement in events and art selections at the Kimo. City's Exhibit

G was cited.

Chairman asked if the Union had any objection to exhibit G. The Union said they did not. Chairman admitted exhibit G into evidence.

Attorney Gonzales asked if Exhibit G was an accurate depiction of the call for artist and her and Mr. Romero discussed it.. Attorney Gonzales went on to discuss Mr. Romero's involvement in curating exhibits at the Kimo. City's Exhibit B, page 2 email was reviewed. Attorney Gonzales asked Mr. Romero about his involvement in the art selection process. The City tried to establish which galleries Mr. Romero was in charge of and who decided which areas he was assigned to. City rested.

Union's Redirect:

Mr. Villarreal asked if the Kimo and South Broadway Cultural Center were areas Mr. Romero was in charge of and this was discussed. The Instagram post Mr. Romero saw online was discussed. The standard process Mr. Romero goes through when opening a new art exhibit was discussed. Murals were discussed. Union rested.

Chairman Baca called for lunch recess at 12:35, to return at 1:45 pm.

Chairman Baca called the meeting back to order at 1:48 pm.

Chairman asked if the Petitioner had any additional witness. Union replied no. Union rested.

City's first witness, Brey Ortiz:

Chairman swore in witness.

Attorney Gonzales asked Ms. Ortiz to discuss her position and role with the City, including her role at Kimo Theater, which was discussed. Staffing at the Kimo in 2019 was discussed. Attorney Gonzales discussed Mr. Romero's duties at the Kimo Theater. City's exhibit F was shown. Pictures of the Kimo Theater were reviewed. City's exhibit E was shown. Ms. Ortiz explained the call out for artists. Exhibit H, Excel spreadsheet of applications artists sent in was reviewed. Exhibit J was shown and discussed. Exhibit D was shown and discussed. City passed the witness.

Mr. Villarreal cross-examined the witness:

City's Exhibit J was shown. Mr. Villarreal discussed Ms. Ortiz's duties to oversee art exhibits and if she had a degree in art or fine art. Exhibit E 1 was shown. Ms. Ortiz said this was a community art event, not a public art exhibit. Mr. Villarreal asked Ms. Ortiz the difference between an exhibit and event. She gave some things she felt were different. The difference between City and Public art were discussed. Exhibit I was discussed. Exhibit E 3 was discussed as well as the discussion among the committee about murals. Union rested.

City redirect:

Attorney Gonzales asked Ms. Ortiz to explain the difference between a call for temporary art and public art. City rested.

Chairman Baca asked if the City would be calling all listed witness. The City said probably only 1, possibly 2.

Next witness called was Dr. Shelle Sanchez.

Attorney Stoker asked for a 5-minute recess before continuing. In recess at 2:59 pm.

Back on record at 3:09 pm.

As a housekeeping item, the Union has no objection to City's Exhibits A-K. Mr. Villarreal stated some of these items refer to another PPC. Chairman said the Union had to object or not object. Union said no objection. Chairman admitted the exhibits into evidence.

Chairman Baca swore in witness Dr. Shelle Sanchez.

Attorney Stoker asked Dr. Sanchez to discuss her position with the City and role, which she did. Attorney Stoker asked her to describe what she has seen is the job as a curator. Mr. Villarreal objected that the witness stated she was not a curator. Chairman Baca allowed and said it sounded she had some experience in the area. Dr. Sanchez went on to speak to the different types of curators, places they curate, types of art and artists they search for, etc. There are many valid approaches to curating. They went

on to discuss committees and different entities. Different types of art installations were discussed. The difference between the Public Arts and Community Events Departments were discussed, along with hierarchy. City's exhibit I was discussed. Dr. Sanchez said she had seen Mr. Romero's job description before. It was discussed who would assign responsibilities for this job, what areas it covers and the hierarchy of the position. City rested.

Union cross-examined witness:

Mr. Villarreal asked if the Union was ever notified of the change at the Kimo, regarding Mr. Romero. Dr. Sanchez discussed this and the showings at Kimo Theater. The Union rested.

Brief redirect by City. City rested.

Follow up by Union. Union rested.

Concludes testimony for this hearing.

Chairman Baca asked for closing arguments.

Union requested 5 minutes to get everything together for the final statements.

Off record at 4:03 pm. Back on record at 4:06 pm.

The Union made its closing arguments. They feel the City had an obligation to notify the Union after changing the duties of Mr. Romero's position. These are all obligatory things to be negotiated with the Union. It was a unilateral change. Chairman asked if Mr. Romero was the only gallery curator. Mr. Villarreal answered yes. The Union asks that the Board find the City failed to notify the Union of changed job duties and by doing so, violated the LMRO. They ask that if changed, it be bargained with the Union.

Attorney Gonzales made closing arguments for the City. She stated the issue here is not if job the description was modified or subjected to change, but if the employer was allowed to dictate job duties of staff. She said the City made a decision to change which areas were galleries and which areas to curate and Mr. Romero is still the Curator. It is the employer's right to decide what areas will be curated. The City asked that this case be dismissed based on the timeliness of this PPC filing. At the point he sat on the committee, Mr. Romero already knew what was going on. City rested.

Chairman Baca made a motion that the Board go into closed session pursuant to Section 10.15.1.H.3 of the Open Meetings Act, which allows for the closing of meetings for deliberation by a public body in connection with an administrative adjudicatory proceeding. Mr. Montoya seconded. A roll call vote was taken and the motion passed 3-0. Session was closed at approximately 4:24 p.m.

The Board returned to open session at approximately 4:36 p.m. The meeting had been in closed session pursuant to Section 10.15.1.H.3 of the Open Meetings Act. Chairman Baca stated the Board was in closed session to discuss and deliberate on LB 23-08 and no other matters were discussed.

Mr. Perlman motioned that the Board deny the Petitioner's complaint and not provide relief. Voted and passed 3-0. Chairman Baca asked the City to provide an order in this matter.

IX. ADJOURNMENT.

Chairman Baca adjourned at 4:38 p.m.



TED BACA, CHAIR

City Labor-Management Relations Board

12/18/23
DATE