



CITY OF ALBUQUERQUE

CITY LABOR-MANAGEMENT RELATIONS BOARD

MONDAY, OCTOBER 23, 2023

MEMBERS PRESENT:

*Chairman Ted Baca
Juan Montoya
Bruce Perlman*

OTHERS PRESENT:

*Nichole Maher
Paul Rogers
James Montalbano
Sam Chavez
Leigh Brunner*

*Kate Furek
Louis Sisneros
Ian Stoker
Mark Finley
Merissa Reddy*

MINUTES

I. CALL TO ORDER.

Chairman Baca called the meeting to order at 9:14 am.

II. REVIEW AND APPROVAL OF AGENDA FOR MONDAY, OCTOBER 23, 2023.

Mr. Perlman moved to approve the agenda. Mr. Montoya seconded.

III. REVIEW AND APPROVAL OF MINUTES FROM OCTOBER 16, 2023.

Nichole Maher let the Board know the Minutes for 10/16/23 would be ready for the 11/6/23 meeting.

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

None.

V. PRESENTMENT AND APPROVAL OF ORDERS:

• **LB 23-05 STIPULATED STAY ORDER**

Chairman Baca reviewed the order. Approved and signed by the Board.

VI. MISCELLANEOUS/STATUS CONFERENCE:

- **REMINDER THERE WILL BE A CASE REVIEW ON 11/13/23 OF OPEN AND PENDING CASES. THE SPREADSHEET OF THE AUDIT WAS SENT OUT TO INVOLVED PARTIES ON 10/13/2023. PLEASE CONTACT NICHOLE MAHER WITH ANY QUESTIONS.**

Chairman Baca reminded everyone about the case review on 11/6/23.

VII. MERITS HEARING:

- **LB 21-54 MERITS HEARING FOR PROHIBITED PRACTICE COMPLAINT FILED BY AFSCME LOCAL 1888 ON BEHALF OF MARLON BATTAGLIA AND MARK FINLEY AGAINST THE CITY OF ALBUQUERQUE MUNICIPAL DEVELOPMENT DEPARTMENT FOR VIOLATING THE COLLECTIVE BARGAINING AGREEMENT 24.1 INVESTIGATIONS, SUB-SECTIONS 24.1.3, 24.1.3.1 AND 24.3.2.**

Preliminary matter: Chairman Baca spoke about a request sent by Mr. Finley and Battaglia Friday, 10/20/2023 and reviewed the letter aloud. Attorney Montalbano stated the Union is prepared to proceed with the PPC and is not sure what recourse the individual parties would have in front of this Board should the Union withdraw its PPCs, as the Union would not approve another private attorney representing the Union. Attorney Ian Stoker said the City opposed the motion and is ready to proceed

today. Mr. Finley addressed the Board and said he is willing to proceed with the Union as his representative. He and Mr. Battaglia stated they would like to be directly involved in the negotiations. Chairman Baca asked to confirm the motion to continue the hearing is withdrawn, and Mr. Finley verbally confirmed it was withdrawn.

Merits Hearing: Attorney James Montalbano appeared on behalf of the Union. Attorney Ian Stoker and Assistant Attorney Kate Furek appeared on behalf of the City.

Chairman Baca read aloud the main facts of the PPC claim, including timelines and individuals involved. Chairman Baca asked if the parties were prepared to proceed and both replied they were.

Attorney Montalbano gave a brief opening and discussed the difference between what would be discussed today and on LB 22-08. Timelines, as the Union understood, were discussed. The Union stated Tomas Romero would be testifying today. Union rested.

Attorney Stoker made opening statements and discussed why the City felt an investigation needed to continue after the timeline was missed. City rested.

Chairman Baca swore in witness Tomas Romero, former Union President.

Attorney Montalbano questioned the witness:

Mr. Romero spoke about his current employment status and past positions held. Attorney Montalbano and Mr. Romero discussed the Union filing this PPC in 2021 and the events that occurred. Attorney Montalbano told Mr. Romero they would be reviewing Exhibits. Exhibit 1 was reviewed. Mr. Romero said he was familiar with the document and discussed the Notice of Investigation. Exhibit 2, page 2 was reviewed.

Chairman Baca called for a 10-minute recess at 10:01 am.

Session called back to order at 10:13 am.

Attorney Montalbano continued with Union's Exhibit 2, pg. 2. Whether discipline was implied on subsequent notices after the missed timeline was discussed. Attorney Montalbano proceeded to City's Exhibit Notebook. It was discussed that the Union saw this as a letter of Investigation and not an interview. The events of the interview meeting were discussed. Union's notebook, Exhibit 4 was discussed. City's Exhibit 3 was compared to the other notice of interview. Attorney Montalbano asked Mr. Romero to compare the 2 letters. Mr. Romero said the only difference he saw was the last sentence of the second letter. It was discussed how these letters and the potential for discipline were to be interpreted by the Union. Tab 5, the letter Mr. Romero sent in response to the PPC they filed regarding continued investigation was reviewed. He said the letter stated Mr. Finley and Mr. Battaglia were told not to testify and asked the City not to retaliate against the men.

Objection by Attorney Furek that foundation was not laid. Overruled by Chairman Baca.

Attorney Montalbano went on to Union Exhibit 6 and it was discussed that the Union was asking the City to stop its investigation. Exhibit 4 was reviewed and said to look like a notice of interview but titled investigation by phone. Attorney Montalbano said the language was still the same as previous notices and the men refused to sign them. The Union said they had issue with the letter because it appeared discipline was still being threatened by the City. Exhibit 5 was reviewed, along with its implications. Mr. Romero said he spoke to the two men and discussed the concerns he had with the telephonic interview. Mr. Romero said the two men were concerned the City was being retaliatory after missing timelines but wanting to continue with the investigation and discipline. Exhibit 10 was discussed.

Chairman Baca asked if the letter not signed by the employees was while they were still on administrative leave. Mr. Romero answered yes. The CBA in effect at the time and stipulations of investigations were reviewed. The Union rested.

City's cross-examination of witness:

Attorney Furek asked for a copy of Union's Exhibit 9 and was provided one from the Board's copy.

Attorney Furek introduced herself to Mr. Romero. She confirmed the dates Mr. Romero was Union President and his understanding of his rights and responsibilities, along with the CBA. It was asked if he could provide the specific part of the CBA that stated discipline could not be imposed after missed deadlines. Mr. Romero said he could not find it on the document at this time. Attorney Furek asked if, as the Union President, it was his responsibility to give messages to employees about their case. Mr. Romero said it was. Attorney Furek asked if the information that they would not be disciplined, as stated in the October letter, was passed on to the employees. Mr. Romero said he did not take it as something that needed to be passed on to them, since he had already filed the PPC. Mr. Romero said he does not recall if he gave that information to the employees. Attorney Furek asked what type of discipline the employees received after the missed deadline. Mr. Romero said they were left on administrative leave and not allowed to go back to work. The City rested.

Re-direct by Attorney Montalbano:

Attorney Montalbano asked if the continued rescheduling of the meeting led to discipline.

Objection by Attorney Furek. Sustained by Chairman Baca.

Attorney Montalbano discussed issues the Union asked to be remedied in the PPC. Mr. Romero agreed the City kept the employees on administrative leave, and never directly communicated they would not be disciplined. The witness was excused.

Attorney Montalbano motioned to enter into evidence Union Exhibits 1-6 and 9. No objections. Chairman Baca admitted the exhibits into evidence. The Union rested.

Attorney Ian Stoker motioned for the Board to rule based on the facts presented thus far, stating the Union had not shown the City did not have a right to continue the investigation, which was not to result in discipline of the employees.

Attorney Montalbano responded stating the Union believes it had made a case showing the City did not stop the original investigation and continued to investigate the employees as evidenced in the same notices sent before the timeline was deadlines. Attorney Montalbano said the email to the Union President was not the same as a notice stating the employees would not be disciplined. He said the City should have sent a notice of non-discipline, but instead sent letters stating discipline was possible. Attorney Stoker said notice to the agent is notice to the employees and it was the Union's failure to communicate with the employees. Attorney Stoker also stated a threat of disciplinary action is not the same as disciplinary action.

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 11:21 a.m.

The Board returned to open session at approximately 11:53 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 21-54 and no other matters were discussed.

Mr. Perlman moved to grant the City's motion. Mr. Montoya moved to deny the City's motion. Chairman Baca seconded Mr. Montoya's motion to deny. Voted 2-1. City to proceed with its case.

Recess for lunch called at 11:59 a.m., to resume at 1:30 p.m.
Back from lunch break and on record at 1:30 p.m.

Chairman Baca asked the City to proceed with its case.

Attorney Stoker and Attorney Furek appeared on behalf of the City. Mr. Paul Rogers was called as a witness. Chairman Baca swore in the witness.

Emergency Recess: Unplanned fire drill started at 1:31 p.m.
Back on record from fire drill at 1:52 p.m.

Attorney Stoker asked Mr. Rogers to discuss his role with the City. He discussed the General Services Department and his duties there. Mr. Rogers said he was familiar with the case involving Mr. Finley and Mr. Battaglia. Mr. Rogers discussed the mask mandate in effect at the time the alleged incident occurred. Mr. Rogers was involved in deciding whether or not to investigate the incident. He stated they did investigate because a use of force was involved. The civilian involved in the incident sustained an injury and the City felt there was an obligation to find out what exactly occurred, and why use of force happened. He said this was useful for the City to know in order to correct the issue. The missed 45-day deadline was discussed. Mr. Rogers stated it was an oversight on HR's part, and they failed to request an extension. Attorney Stoker went on to discuss the City's attempts to interview the involved employees. Mr. Rogers said these were not things he would discuss with the employees, but would communicate to the Union. Exhibit tab 5 and 8 were discussed and compared. Attorney Stoker moved to admit City Exhibit 8. Attorney Montalbano asked what the difference between Exhibit 5 and 8 was. The City said they did not believe there to be a difference. Discipline and investigations, as outlined in the CBA, were discussed. Attorney Stoker discussed the employees being on administrative leave. Attorney Stoker asked Mr. Rogers about discipline of the employees after the missed deadline. Mr. Rogers said there would have been none, unless a new set of facts implied issues. The City rested.

Attorney Montalbano cross-examined the witness:

Attorney Montalbano asked if the employees were assaulted and Mr. Rogers said no. Attorney Montalbano stated one of the employees were spit on. Mr. Rogers said he was not aware that had occurred. Attorney Montalbano asked if Mr. Rogers knew Mr. Battaglia had audio of the incident. He replied no. Attorney Montalbano asked how the City found out what happened if they were not aware at the beginning. Mr. Rogers stated he was not sure who brought the incident to light but confirmed it was not the citizen who was injured and ran away after incident. Attorney Montalbano went on to discuss who was at which interview and what was communicated. They reviewed tab 9, pg. 36, 24.1.4. Mr. Rogers said the investigation had never concluded and the employees were not put back to work since the investigation was still ongoing. The memos sent to the employees and what the City communicated were then discussed. The Union rested.

City redirect of witness:

Attorney Stoker asked if Mr. Rogers could have known any claims were filed at the time they were attempting to complete the investigation, to which he replied no. Mr. Rogers said he communicated with the Union, assuming they were the employees'

agent and relaying necessary information. The City rested.

Chairman Baca asked for brief closings from the City and Union. The City said they rested.

Attorney Montalbano made a brief closing. He highlighted the investigation started in July 2021, never stopped, and the employees were disciplined in connection to that investigation. Chairman Baca discussed with Attorney Montalbano what was communicated and with whom. The Union argues that this is a continuum from the July incident investigation. The employees showed up to all meetings up to the late November phone call, which is disputed but not the subject of this day's hearing. The Union asked that these men be put back to work and made whole. The Union rested.

Attorney Furek spoke about the initial investigation's purpose and the City's interest. The CBA only covering disciplinary actions were discussed. Attorney Furek stated it is not the City's duty to sit down with employees to explain anything about a PPC or its resolution. She also said there is nothing written in the CBA stating the City is to notify employees they are no longer targets but now witnesses. She stated the Union should have told the employees they were only witnesses at that point. Attorney Furek said the City could not communicate information directly because the employees had representation. She said the subject of the interview did not change, so the explanation on the letters did not change, because it was still the same subject. The City rested.

Attorney Montalbano asked that the Board review Exhibit 12. He stated the City is trying to put this off on the Union and MG Barreras, saying they did not do as they were supposed to. Attorney Montalbano asked the Board to rule in favor of the Union. Chairman Baca admitted Exhibit 12 into evidence.

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 3:02 p.m.

The Board returned to open session at approximately 3:19 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 21-54 and no other matters were discussed.

Chairman Baca motioned the Board rule the Union had not shown its burden of proof. Mr. Perlman seconded. Mr. Montoya voted against. Voted 2-1. City prevailed.

Attorney Montalbano asked to schedule LB 22-08. Chairman Baca said to schedule for 11/27/23.

- **LB 22-08 (only if LB 21-54 is resolved) MERITS HEARING FOR PROHIBITED PRACTICE COMPLAINT FILED BY AFSCME LOCAL 1888 ON BEHALF OF MARLON BATTAGLIA AND MARK FINLEY AGAINST THE CITY OF ALBUQUERQUE DEPARTMENT OF MUNICIPAL DEVELOPMENT FOR CONTRACT VIOLATIONS OF DUE PROCESS.**

This case was not heard today but is set for a merits hearing on 11/27/23.

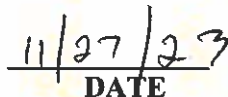
VIII. ADJOURNMENT.

Chairman Baca adjourned meeting at 3:23 pm.



TED BACA, CHAIR

City Labor-Management Relations Board



DATE