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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

No CV-2001-07560

21 SOLID WASTE MANAGEMENT  
DEPARTMENT EMPLOYEES,

Petitioners,

vs.

CITY OF ALBUQUERQUE, et al,

Respondents.

PERMANENT WRIT OF MANDAMUS

This matter came before the Court pursuant to the Court's Alternative Writ of Mandamus and the Court, having heard the matter, received documentary and testimonial evidence and considered the arguments of counsel, hereby issues and approves this Permanent Writ of Mandamus.

**Wherefore**, the Court issues its Permanent Writ of Mandamus finding that:

1. Petitioners are full-time, permanent, classified employees of the City of Albuquerque's Solid Waste Management Department and are beneficially interested in the issues brought in the Alternative Writ of Mandamus.
2. Respondents have certain non-discretionary duties provided by the City of Albuquerque Charter and Ordinances which are properly the subject of the Court's Writ of Mandamus.
3. The City of Albuquerque's Merit System Ordinance provides for a Personnel Board and Section 3-1-4(A) states:

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*B. Kim*  
CLERK DISTRICT COURT

Board members shall serve two-year terms which expire September 1. The terms of the members who are serving when Ordinance 29-1998 was passed shall expire as follows: the term of one mayoral appointee and one elected member, chosen by lot, shall expire September 2000. The terms of the remaining three members shall expire September 1, 2001.

4. Under Section 3-1-4(A), the terms of two Personnel Board members should have expired on September 1, 2000; the other three members' terms expired as of September 1, 2001.

5. Respondents have taken no action to replace any of the Personnel Board members whose terms have expired.

6. No Personnel Board member was replaced or reappointed on September 1, 2000; there was no drawing "by lot" to see whose term expired. Again, on September 1, 2001, when the terms of the remaining three Personnel Board members expired, there were no appointments made to replace or reappoint the three Board members whose terms had expired.

7. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law to address this failure to timely appoint Personnel Board members.

8. The Court finds that the City Respondents have shown good and ample cause why allegations in the Alternative Writ of Mandamus not specifically addressed in this Permanent Writ of Mandamus should be quashed.

**Wherefore, Respondents are hereby ORDERED as follows:**

1. The Mayor is ordered to select two Personnel Board members and submit their names to the City Council for action;

2. Respondents are ordered to plan and implement an election for City employees to select two members of the Personnel Board. The names of the two

candidates with the most votes shall be submitted to the City Council for action;

3. Once the four Board members have been selected, they shall have an open meeting to select the name of the fifth member. The Chief Administrative Officer is ordered to promptly submit to the City Council for action the name of the fifth member of the Personnel Board;

4. The City Council shall appropriately exercise its discretion in acting upon the nominations forwarded to them;

5. Respondents shall ensure that the Board members properly establish staggered terms so that the term of one mayoral appointee and one elected member, to be chosen by lot, will expire on September 1, 2002. The terms of the other three Board members will expire in September 1, 2003;

6. The Respondents are ordered to pay Petitioners' costs as allowed under the Rules of Civil Procedure and all parties shall bear their own attorney's fees.

7. This is a final appealable order. However, the Court retains jurisdiction to ensure that Personnel Board members are properly appointed.

*Theresa Baca*

HONORABLE THERESA BACA  
District Court Judge

Submitted by:

*Charles W. Kolberg*  
Charles W. Kolberg

Approved as to form:

telephonically approved 2/28/02  
Paul Livingston

*ew*