

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

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, and
PETER BEHRMAN, Transit Department Director,**

Defendants.

SETTLEMENT AGREEMENT

1. Performance Evaluations.

The parties stipulate that Administrative Instructions Nos. 7-32-1 and 7-32-2 are appropriate, and the City promises to comply with the Merit System's requirement of at least annual performance evaluations for classified employees.

2. Mediation of Disciplinary Matters

The parties agree that the following procedures related to mediation apply only to the Transit Department NMTU bargaining unit employees.

a. The Transit Department, its Director, or supervisors contemplating discipline of an employee may not decline or otherwise suggest rejection of mediation; all parties and their advisors or representatives must participate in any mediation scheduled by the Mediation Coordinator in good faith.

- b. The Mediation Coordinator has the sole discretion to determine whether a proposed disciplinary action is appropriate for mediation. The Mediation Coordinator may not consider the unwillingness of either party to engage in mediation.
- c. The parties may include in any mediation such advisors or representatives as they wish. It is understood that City management and Union representatives are concerned with the mediation process and results.
- d. Persons with authority to make an agreement at the time of the mediation shall be present at the mediation proceeding or shall be immediately available by telephone.
- e. The Merit System Ordinance provisions and Personnel Rule 902.2 shall be applied so as to preclude the holding of a pre-determination hearing until referral has been made to the Mediation Coordinator and either mediation has been deemed inappropriate in the particular case, or the parties have engaged in mediation without resolving the dispute.

3. City Personnel Board.

The parties agree to a Stipulated Court Order that mandates the following:

- a. Staggered terms of Board members will be implemented as required by the Merit System Ordinance starting on September 1, 2006, so that one City representative and one employee representative will be newly appointed or reappointed or elected or re-elected each year. No member shall serve more than two consecutive terms.
- b. Each September the four Board members shall meet in public to choose a fifth member who shall be the chair person.
- c. In the event the Board lacks a quorum and there are matters on the Board's agenda, the Board will not wait for the next monthly meeting, but will meet at the next reasonable opportunity.
- d. Only matters 1) related to deliberation on cases presented to the Board or 2) related to legal advice from the Board's attorney, subject to the attorney-client privilege and pertaining to threatened or pending litigation in which the Board is or may become a participant, may be subject to executive or closed session.

4. Personnel Hearing Officers.

- a. The City agrees to advertise widely for hearing officers, including in the New Mexico Bar Bulletin and local newspapers.
- b. Plaintiffs urge that the selection of hearing officers by the ad hoc committee must be done in public; the City understands its ordinances to require the selection to take place in closed meetings under its purchasing ordinances. The parties agree to resolve this matter at a later date, with Plaintiffs dismissing this claim without prejudice to renew it again.

c. Personnel hearing officers shall be employed under two-year contracts as required by the Merit System Ordinance; no hearing officer shall be retained beyond a two-year term without being subject to a new selection process.

5. Administration of the Merit System.

The City acknowledges the necessity of having adequate administration of its Merit System. The City agrees to commit the necessary resources and personnel to ensure that the Merit System functions without compromise or violation of the applicable ordinances, rules, and policies.

6. Other Matters.

a. The City agrees to reinstate Katherine Cerami to her position as a bus driver, and pay back pay from the date she received a high school diploma or Graduate Equivalency Diploma; the City agrees to pay Jose Ramirez back pay for the time between his termination and reinstatement, minus interim earnings.

b. The City agrees to recommence the disciplinary process, if necessary, on Johnny Aguilar and Chris Hodgins.

c. The City agrees to pay the sum of Fifty-Thousand Dollars (\$50,000) to the NMTU, which will include all costs and attorney fees, and which, along with the other provisions of this settlement agreement, shall constitute full and complete settlement.

d. The parties agree the Court retains jurisdiction to enforce this settlement agreement.

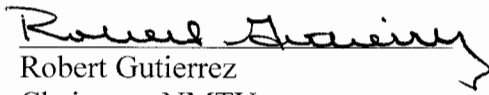
Signed and approved by:



Paul Livingston
Attorney for Plaintiffs



Michael I. Garcia
Assistant City Attorney



Robert Gutierrez
Chairman, NMTU

James Lewis
Chief Administrative Officer