

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

No. CV-2003-2215

NEW MEXICO TRANSPORTATION UNION, et al.,

Plaintiffs,

vs.

CITY OF ALBUQUERQUE, et al.,

Defendants,

**MOTION TO COMPEL DISCOVERY RESPONSES
AND FOR SANCTIONS PURSUANT TO RULE 1-037**

Plaintiffs, a City of Albuquerque labor union, members of the bargaining unit represented by the Union, and its Chairman, present the following Motion to Compel Discovery Responses and for Sanctions pursuant to Rule 1-037(D), New Mexico Rules of Civil Procedure, stating as grounds:

1. A Rule 1-016 Pretrial Scheduling Order in this case entered on December 7, 2004, set the deadline for completion of “(a)ll pretrial discovery” for July 1, 2005, stating that “(i)nterrogatories . . . and requests for production shall be considered timely only if the responses are due prior to this deadline.
2. Plaintiffs’ counsel delivered two sets of Interrogatories, one to the City and one to City Chief Administrative Officer James Lewis, and a set of Requests for Production to Deputy City Attorney Randy Autio on May 27, 2005. Pursuant to the New

Mexico Rules of Civil Procedure, Defendants' responses to Plaintiffs' discovery requests were due 30 days later, on or before Monday, June 27, 2005.

3. Plaintiffs' counsel has made repeated efforts to contact counsel for the City concerning the City's responses to Plaintiffs' discovery requests, including telephone calls to Assistant City Attorney Paula Forney and telephone calls and conversations with paralegal assistant Theresa Armstrong. Accordingly, Plaintiffs' counsel has made a good faith effort to resolve the issue with opposing counsel prior to filing this motion to compel discovery.

4. Defendants have not requested an extension of time to respond to Plaintiffs' discovery requests. Defendants have not applied for a protective order.

5. To this date, July 5, 2005, Plaintiffs have received no responses to the Interrogatories, and the City has not responded to Plaintiffs' Requests for Production. According to Ms. Armstrong, she is still "working on" securing the City's interrogatory answers and discovery responses.

6. The Scheduling Order also provided that the deadline for dispositive motions was June 30, 2005. Plaintiffs were unable to meet that deadline because the Defendants have not yet responded to Plaintiffs' discovery requests.

7. The Scheduling Order also provided that the deadline for all other motions, except motions in limine, shall be filed by July 9, 2005. Motions, especially motions relating to discovery other than this motion, can obviously not be filed by the deadline, because Defendants have not yet responded to Plaintiffs' discovery requests.

8. Rule 1-037 (D) provides that:

If a party . . . fails (2) to serve answers or objections to interrogatories submitted under Rule 1-033 NMRA, after proper service of the interrogatories; or (3) to serve a written response to a request for inspection submitted under Rule 1-034 NMRA, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under Subparagraphs (a), (b) and (c) of Subparagraph (2) of Paragraph B of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure . . .

9. The relief set out in Rule 1-037(D), referred to above, includes (a) an order that the matters addressed in the interrogatories and requests for production:

shall be taken to be established for the purposes of the action in accordance with the claims of the party obtaining the order; (b) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; (c) an order . . . rendering a judgment in default against the disobedient party.

10. A copy of the two sets of unanswered interrogatories and the set of requests for production to which Defendants have not responded are attached hereto, along with a request for hearing. A hearing is presently set for July 12, 2005, at 9:40 a.m. on Defendants' Motion to Enforce (a settlement conference) and Motion for Extension of Time (to file dispositive motions).

WHEREFORE, Plaintiffs request an order compelling Defendant City of Albuquerque's responses to interrogatories and requests for production, providing relief pursuant to Rule 1-037(D), and awarding sanctions, including attorney's fees, for the City's failures to respond in accordance with Rule 1-037, NMRA.

Respectfully submitted,

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I hereby certify that a copy of the foregoing Motion to Compel and for Sanctions was delivered to Assistant City Attorney Paula I. Forney on July 7, 2005.

Paul Livingston