

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

NO: D 202 CV 2014 6034

AFSCME COUNCIL 18, et.al.,
Plaintiff(s),

-vs-

CITY OF ALBUQUERQUE,
Defendant(s).

**ORDER ON MOTION FOR PRELIMINARY INJUNCTION AND ORDER FOR
SETTLEMENT FACILITATION**

THIS MATTER having come before the Court upon Plaintiff's Motion for Preliminary Injunction; the Court having reviewed the parties' briefing and having conducted a hearing in open court on October 17, 2014, at which all parties appeared through counsel who argued on their behalf; the Court having reviewed the file; and the Court being sufficiently advised:

THE COURT FINDS:

1. There is jurisdiction over the parties and the subject matter.
2. This case arises from a long term dispute between the parties arising when certain Collective Bargaining Agreements expired without the parties having come to terms on their continuing relationship. During the last several years, the parties have engaged in further negotiations but have continued to experience impasse and have operated day to day under terms which existed at the expiration of the expired CBA's. *See : AFSCME I 2013 NMCA 012; AFSCME II 2013 NMCA 063*
3. Act Three of this dispute comes before the Court after failure of further negotiations during Summer 2014 and Defendant City's September 12, 2014, letters to Plaintiffs which announced the City would impose certain and specific changes in the employee-employer

relationship. Many, if not all, these changes address issues which had been the subject of the previous failed negotiations.

4. Plaintiff's call "foul" and seek Order of the Court preventing the City from implementing the aforementioned changes in terms of employment, except for the 3% salary increase set forth in the September 12, 2014, announcement letters.

5. Defendant City asserts Plaintiff's face no imminent danger of irreparable injury since 1) it will participate in continuing negotiations in good faith under the LMRO Ordinance; and 2) an award of damages may reasonably compensate Plaintiffs. *See: State ex rel Hwy Dept. -vs- City of Sunland Park 2000 NMCA 44.* Plaintiff maintains the delicate balance inherent in the parties' relationship and the collective bargaining process will be negatively impacted and the very purpose of the LMRO derogated.

6. Defendant further asserts the financial impact upon the City if it is unable to impose the announced changes in terms is greater than any impact upon Plaintiffs which will stem from those changes and that the financial impact of an Injunction also adversely effects the public interest by requiring the City continue honoring the terms of the expired contracts. *Id.*

7. Each party vehemently maintains the other has steadfastly exhibited bad faith towards the other during the ongoing negotiations.

8. Despite longstanding efforts, the parties remain unable to resolve any of their differences. The Court believes one of the reasons for this is the use of "zero sum" tactics whereunder either all issues, or none of the issues, must be resolved in each negotiating round or the parties start all over again. Although allowed under the LMRO, the simple fact is such tactics have proven unsuccessful, to put it charitably.

9. Good cause exists for this Court to require the parties to engage in broader Mediation in

accord with LR 2 602 .

10. Neither party will be unduly harmed or prejudiced, and the public's interest will be better served ultimately, by maintenance of the " status quo " for a reasonable period while the parties pursue further Mediation efforts.

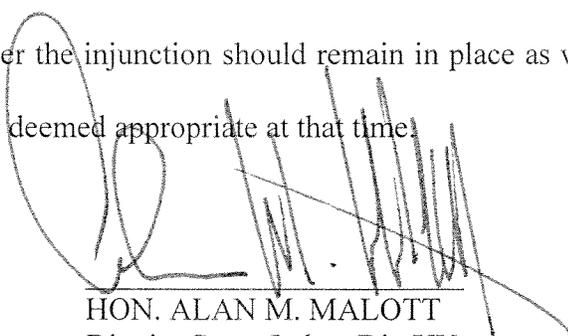
11. It is inappropriate for the Court to " pick and choose " which changes in terms from the September 12, 2014, letters should be stopped and which should be allowed into effect. Plaintiffs' claim that the Court should block all but the 3% pay raise is not well taken.

12. Plaintiff's Motion should be partially granted as follows.

WHEREFORE, it is Ordered:

1. Defendant City of Albuquerque is hereby enjoined from implementing any and all of the changes in terms of the employee-employer relationship with Plaintiffs set forth in the City's September 12, 2014, letters to Plaintiffs, or from implementing any other changes to said relationship unilaterally for a period of ninety (90) days from date of this Order.
2. The Honorable Alan C. Torgerson (Ret .) is hereby appointed Settlement Facilitator in accord with LR 2 602. The parties shall communicate and cooperate with Judge Torgerson and each other to organize and schedule one or more Mediation Sessions during the aforementioned 90 days.
3. Representatives of each party with full authority to resolve any and all issues in dispute shall *personally* attend each Mediation Session as may be required. Each and every party shall participate in good faith during each such Mediation Session to resolve one or all of the issues in dispute. Failure to participate in good faith may lead to sanctions being imposed by the Court.

4. The terms and conditions of the Mediation(s) ordered herein shall be determined by the Mediator and, where applicable, by agreement of the parties. *However* the parties shall not utilize the “ zero sum “ tactic previously employed in the failed LMRO negotiations whereunder the parties must resolve all issues or no issues at all in each round of negotiations. Instead, a cumulative resolution approach shall be employed; an issue once resolved shall remain resolved.
5. Judge Torgerson shall receive his ordinary and normal hourly rate for his services herein , to be borne equally between the Plaintiffs and Defendant. The Court reserves jurisdiction to otherwise apportion these , and other, costs and expenses at the conclusion of this matter.
6. The Court will schedule further Hearing on this matter at or near the expiration of the 90 day period to determine whether the injunction should remain in place as well as other relief as may be requested or deemed appropriate at that time.



HON. ALAN M. MALOTT
District Court Judge, Div XV

Dated: 10-17-14
2:30

Hand Delivered in Open Court 10/17/14
AMM