

CITY of BELEN
LOCAL LABOR/MANAGEMENT BOARD MEETING
November 13, 2017
9:00 a.m.

Chairman Juan Montoya called the Meeting of the Local Labor/Management Board to order at 9:02 a.m. Roll Call taken by Brian McBain, Deputy City Clerk.

PRESENT: Mr. Juan Montoya (Board Chair)
Mr. Jerry Martinez
Mr. Phillip Jaramillo

DEPUTY CITY CLERK: Brian McBain

PARTIES: Ms. Dina Holcomb (Representing the City of Belen)
Ms. Leona Vigil (Belen City Manager)
Mr. Scott Conner (Belen Police Chief)
Mr. Shane Utes (Representing Luis Lopez)
Luis Lopez (Respondent)

OTHERS: Public in the Audience, see attached Sign-in Sheet

PLEDGE OF ALLEGIANCE

Chairman Juan Montoya led the Pledge of Allegiance.

APPROVAL OF AGENDA

Chairman Juan Montoya asked for a motion to approve the agenda. Board Member Jaramillo made a motion. Chairman Juan Montoya asked for a second. Board Member Martinez seconded the motion.

Roll Call Vote:

Mr. Juan Montoya	Yes	
Mr. Jerry Martinez	Yes	
Mr. Phillip Jaramillo	Yes	Motion Carried

PROHIBITED PRACTICE COMPLAINT

A) LUIS LOPEZ v. THE CITY OF BELEN

Chairman Montoya advised that we should first take up the matter of the motion to dismiss first and then proceed for there, opening the floor to the counsel for the City of Belen to open.

Ms. Dina Holcomb: Mr. Chair, Members of the Board, you have before you an amended motion to dismiss or to dismiss the amended prohibited practice charge, one was filed originally on October 10th and the second one filed on November 6th. We have a couple of issues here that part of the amended prohibited practice charge refers to a letter that was rescinded by the Chief of Police that was attached as Exhibit A to our initial motion, therefore, we believe these portions of the prohibited practice charge are not before you today and are completely immaterial as much as they have been rescinded. More importantly we have an issue to regard to whether this Board even has jurisdiction over this matter because the Union is taking the same exact matter, Mr. Luis Lopez's termination to arbitration, that appeal to arbitration and request for a panel of arbitrators was attached as Exhibit B to the motion, we have selected an arbitrator and he has given us proposed dates for an arbitration hearing which we now have to select from. Under your own rules, Rule 3.10, deferral of prohibited practice charge, it states that if the Board becomes aware that a party has initiated another administrative or legal proceeding that may include the same fact as set forth in the prohibited practice charge, the Board may hold the proceeding in abeyance pending the outcome of the other proceeding, that is what we are asking you to do today, is to essentially allow the parties to proceed through arbitration on this same exact matter which is over the same exact facts. More importantly, the collective bargaining agreement which was attached as Exhibit C to the second motion that was filed, at Section 25.12,

states this is the only grievance procedure available to the bargaining unit and the union and shall be the sole and exclusive method for resolving any and all claims arising from the alleged violation of this agreement, or a grievance of disciplinary action. Clearly the issue before you states that is it regard to his disciplinary action, his termination states that repeatedly throughout the prohibited practice charge the union has agreed in the collective bargaining agreement that there sole and only method for appealing that issue is to go to grievance arbitration and they have been issued that proceeding. To have two proceedings going simultaneously before an arbitrator and before this Board is not only a waste of public resources but it also could potentially wind up where we have differing decision when we don't know which one controls, therefore, we ask that you differ this matter to arbitration and allow the proceeding to proceed in that forum in accordance what that Union has agreed to and in accordance your own rules.

Mr. Shane Utes: Good Morning members of the Board, on behalf of Mr. Luis Lopez. Let me provide you with a little background of what we are going to be talking about here today, Mr. Lopez was terminated by the City of Belen, Sgt. Lopez before he was terminated, he worked for Belen Police Department for five years, he is also President of the Union, and as President of the Union, has responsibility over the other Police Officers within the context of the collective bargaining agreement. Assistant Deputy Miller created a lot of problems in the workplace, problems that many of the employees and members of the Union complained to Mr. Lopez about, Mr. Lopez felt compelled to take action as the President of the Union, he put together, with the assistance of his Union, a petition, a petition of no confidence against Assistant Chief Miller. As a result of the preparation of this petition, which as we all know is fairly common in the public sector workplace, especially in Police Departments, he was terminated, he was fired for preparing a petition of no confidence, that is what this case is about and that is what we are here for. The preparation of a petition of no confidence by a Union is protected activity, and one of the primary responsibilities of this Board is to protect employees who are in this situation, employees who stick their neck out for the good of other employees, and for the good of the citizens of the City of Belen, file things like a petition for no confidence, as a result of his courageous activity, he wound up terminated. That is what this case is about, it is a very clear situation, the notice of termination is about the things that he did to prepare the petition, and we will explore this today. What we have in front of you is a motion to dismiss, let talk about the law with regard to what they have asked you to do. What they have asked you to first do is to differ this to arbitration, no question about it, parties have an arbitration provision, no question about it, this case is lined up for arbitration, those are two different issue though. What I would like to have you do, I hope that you have your deferral policy in front of you, this is a policy that gives you the option to differ, Ms. Holcomb told you that you don't have jurisdiction here, that is incorrect, that is legally incorrect, you have a choice and here is how it reads. If the Board becomes aware that a party has initiated another administrative or legal proceeding, this Board may, and it gives you two options: Option number one, you may hold the proceeding of the prohibited practice charge, that is this, in abeyance pending the outcome of the other proceeding, or two, you may proceed with this proceeding of the complaint and hold the other, the arbitration proceeding in abeyance. So you guys are in control, you can do one of these two things, you can hold this in abeyance, or you can hold the arbitration in abeyance, we would ask that you hold the arbitration in abeyance at the present time and here this claim because this is important for a couple of reasons. First, Sgt. Lopez was terminated as a result of his Union activity, explicitly prohibited by your own ordinance, this is precisely the kind of thing that is your responsibility to take action on, and you guys are required to protect people who take these kinds of actions, but secondarily, let me tell you what happened. The petition was provided to City Council and the City of Belen Police Department hired an independent investigator, Robert Casewell Investigations, they did an investigation of the petition, they called other Police Officers in and asked them about the petition, whether they signed it, why they signed it, we cannot allow that kind of behavior, we can't let a City in the State of New Mexico, call employees in and ask them about these sorts of things, so the remedy is twofold. It is not a remedy just for Mr. Lopez for reinstatement, we certainty believe that you will order his reinstatement at the end of this hearing, but it is for a second, and just as important reason, which is the fact that employers cannot be allowed to just go crazy and investigate its employees when its employees want to take an action like this. So we what we would request is that you differ the arbitration, let us hold off on the arbitration, and you reach a decision as to whether or not, Sgt. Lopez was terminated because of his Union activity. The contractual provision says that if there is an arbitration proceeding, it doesn't in any way address or prohibit this Board from taking an action, this Board identifies in its own ordinance prohibited practices, those prohibited practices include discharging an employee because the employee has signed or filed an affidavit, petition, grievance or complaint, it is against Belen's laws to terminate an employee who has signed or filed an affidavit,

petition, grievance or complaint, this is precisely what Mr. Lopez did, this is precisely what this Board is here for and we would request that this case not be differed, not be dismissed but heard on the merits today.

Ms. Dina Holcomb: Mr. Chair, Members of the Board, I wanted to address a couple of things that Mr. Utes has presented to you. The deferral policy in your rules and regulations is permissive, however, this would be true that it would be completely permissive for this Board to differ to arbitration if the Union hadn't agreed to the language in the collective bargaining agreement that says your one and only avenue for appealing a termination is to go to arbitration. They gave up that deferral option to the Board and said, we only want to go to arbitration. In addition, the Board may proceed with processing the complaint and request the other proceeding to be held in abeyance. So you do not actually have the power to hold the arbitration in abeyance, you have to request that of the parties. I would request that if you want to proceed with this hearing and we go forward on the merits, we are perfectly happy to do that if the Union is willing to waive arbitration, because it does not make sense to have two proceedings on the same exact matter, as he stated, we are here over the termination of Mr. Lopez. So we are amendable to proceeding before this Board to hear all of the issues with the termination, if the Union is willing to waive the arbitration that they agreed to in the collective bargaining agreement. The issue with regard to why he was terminated again goes to the merits of the case, he brought a petition complaining about the Deputy Chief, with many issues that would rise to the level of hostile work environment, we had an obligation to investigate that and that is what we did with bringing in an outside party, unbiased third party, that has no relationship to any of the witnesses, we proceeded with that investigation, and in that investigation it was uncovered that Mr. Luis Lopez engaged in inappropriate activity that led to his termination. Therefore, we ask again either to proceed by asking the Union to waive arbitration, or proceed by allowing the parties to go to arbitration over this termination.

Mr. Shane Utes: Lets be real clear here, what an arbitration does and what you guys do. What an arbitration does is answers the question whether or not Sgt. Lopez was terminated with just cause, whether there was just cause to terminate him, what you guys determine if whether or not he was terminated as a result of his Union activity. The arbitrator does not have the legal authority to answer the question that you guys have to answer, you guys are the only party with the legal authority to answer the question, and did they terminate Sgt. Lopez because of his Union activity. So there are two different issues that must be addressed, the arbitrator does not have the authority to address the issue that you have to address, he can't resolve those issues, only you guys can resolve those issues. So that is the difference between the two proceedings, which is why it is necessary, there must be two proceedings. It is also precisely why your ordinance is written the way that it does, it has the permissive language, it doesn't ever ask any party to waive anything, and let be real clear about that, it says that the proceeding may be held in abeyance, fundamentally, are completely different legal concept, holding something in abeyance which is what the law says and what Ms. Holcomb says, which is we should waive our right under the grievance process. Again, hopefully that is fairly obvious to you guys, but holding something in abeyance, sets it aside for the moment, so you are going to set one of these two procedures aside for the moment, not waive this man's rights with regard to one or two of these procedures. So, you are going to have to go through with one or the other, you are going to have to choose whether or not an arbitrator is going to hear a part of the issue first or your guys are going to hear part of the issue, because unfortunately we have two different authorities, responsible for hearing two entirely different legal questions. Contract, which Ms. Holcomb makes reference to, identifies certain things that we would waive, the Union may waive certain rights, but the Union cannot waive Sgt. Lopez's rights to go before this Board and say that I have been terminated because of my Union activities, that is the primary responsibility of this Board, and we ask this Board to take responsibility today and hear that question.

Chairman Montoya: Has an arbitrator been selected?

Ms. Dina Holcomb: yes.

Chairman Montoya: And a date set for the arbitration?

Ms. Dina Holcomb: He has offered us dates but we have not selected a date yet. I want to point out one thing, the Union can waive rights and they did, they said that it is the sole and exclusive method for resolving any and all claims, from the alleged violation of this agreement or a grievance of disciplinary action. They choose that, any and all, there is no other way to state that we are not covering the issue of Union activity, and just cause will give

them the opportunity to raise that issue to the arbitrator, that he was wrongfully terminated and not for just cause because of his Union activity.

Chairman Montoya: Where is that language?

Ms. Dina Holcomb: 25.12, it is Exhibit C to the motion, and it is 25.12 of the collective bargaining agreement, under the grievance procedure.

Chairman Montoya: I think we ought to take up the issue of the motion, but I am going to recommend that we move into Executive Session, and in that Executive Session, discuss nothing other than the motion to dismiss, and do we have a number for this case?

Ms. Dina Holcomb: I do not believe so yet, I think that what you all have been doing is the date htat it was filed in the past, you have done, the original PPC was filed July 19, 2017.

Mr. Shane Utes: And my office does not have a number, but you mean like a case number, yeah, I do not think we do.

Chairman Montoya: So this is case number 71917, is that right, do both parties agree to this?

Ms. Dina Holcomb: Yes.

Mr. Shane Utes: Yes.

APPROVAL/DISAPPROVAL TO ENTER INTO EXECUTIVE SESSION FOR THE DISCUSSION OF THE MOTION TO DISMISS THE COMPLAINT (CASE# 71917) AS ALLOWED PER THE OPEN MEETINGS ACT 10-15-1 (H-3)

Chairman Juan Montoya asked for a motion. Board Member Jaramillo made a motion to enter into Executive Session. Chairman Juan Montoya asked for a second. Board Member Martinez seconded the motion.

Roll Call Vote:

Mr. Juan Montoya	Yes	
Mr. Jerry Martinez	Yes	
Mr. Phillip Jaramillo	Yes	Motion Carried

****The Board entered into Closed Session at 9:30 a.m.****

Chairman Juan Montoya asked for a motion. Board Member Martinez made a motion to re-enter into Open Session and advised that the matters discussed in the closed meeting were limited only to those specified in the motion for closure. Chairman Juan Montoya asked for a second. Board Member Jaramillo seconded the motion.

Roll Call Vote:

Mr. Juan Montoya	Yes	
Mr. Jerry Martinez	Yes	
Mr. Phillip Jaramillo	Yes	Motion Carried

****The Board returned to Open Session at 9:55 a.m.****

Mr. Shane Utes: While you guys were conferring, parties where conferring, and we think we have come up with a plan that is acceptable to us, if this is acceptable to the Board. It would involve the Board hearing the prohibited practice compliant and also hearing the allegations of the violation of the contract which is Mr. Lopez was terminated without just cause. We would ask the Board to hear both issues, parties agreed to have the Board to hear both issues, we would set the hearing for a day as soon as possible for everybody so that we can start, because there are additional issues that will be heard. Ms. Holcomb and the City would go first, we would go second and that's what we would propose that this is acceptable to the Board.

Chairman Montoya: So we would postpone today's hearing and reschedule it for some other time.

Mr. Shane Utes: Postpone the hearing on the merits and you would hear the both the contractual issues and the PPC issues.

Chairman Montoya: That is fine with me.

Board Member Martinez: And arbitration, you guys would what?

Mr. Shane Utes: We would not go to arbitration.

Board Member Martinez: Ok, so this would be the final, you guys would agree that what we would hear in our decision, would be the final.

Mr. Shane Utes: It would resolve the allegations raised in the prohibited practice complaint and all fo the allegations raised in the grievance, is that what we have agreed on?

Ms. Dina Holcomb: That is correct.

Board Member Martinez: How soon would you reschedule this?

Mr. Shane Utes: I got nothing going on tomorrow, but as soon as possible, yes sir.

Ms. Dina Holcomb: We would also be asking the Board to give us a date on exchange of documents and list of witnesses because that is set forth your rules and we did not have that for today, so we have not exchanged any documents or exhibits.

Mr. Shane Utes: That is fine.

Chairman Montoya: What if you exchange whatever discovery you are going to do by the November 30th, this gives you 2 and ½ weeks.

Mr. Shane Utes: Sounds good.

Chairman Montoya: And then we have a hearing on the merits sometime in December, hopefully not the 25th, maybe the second week of December.

Both Parties and Board Members then negotiated with their schedules in deciding on a date for the next hearing

Chairman Montoya: Both Parties and Board Members have agreed on scheduling the next hearing on January 5th, 2018 at 9:00 a.m. is there anything else we can do today?

Mr. Shane Utes: Not for the Union sir.

Ms. Dina Holcomb: Not from the City, thank you.

CONTINUANCE OF HEARING:

Chairman Juan Montoya asked for a motion to continue this Board Meeting/Hearing on January 5, 2018 at 9:00 a.m. in the Belen City Hall Council Chambers. Board Member Jaramillo made a motion. Chairman Juan Montoya asked for a second. Board Member Martinez seconded the motion.

Roll Call Vote:

Mr. Juan Montoya	Yes	
Mr. Jerry Martinez	Yes	
Mr. Phillip Jaramillo	Yes	Motion Carried

ADJOURNMENT:

Chairman Juan Montoya adjourned the Board Meeting at 10:03 a.m.



Brian McBain, Deputy City Clerk



Juan Montoya, Board Chair