

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

ALBUQUERQUE POLICE
OFFICERS' ASSOCIATION,
JOEY SIGALA, FELIPE GARCIA,
TOM NOVICKI and MATT FISHER,

COURT OF APPEALS OF THE STATE OF NEW MEXICO
FILED
MAY 31 2012
Windy Jones

Plaintiffs/Appellants/Cross-Appellees,

v.

Ct. App. No. 31,632
(Consolidated with No. 31,606)

CITY OF ALBUQUERQUE,
ALBUQUERQUE POLICE DEPARTMENT,
and MAYOR RICHARD BERRY,

Defendant/Appellees/Cross-Appellants.

DEFENDANTS/APPELLEES' ANSWER BRIEF

On appeal from Second Judicial District Court, Bernalillo County
The Honorable Clay Campbell presiding
No. CV-2010-08640

David Tourek, City Attorney
Rebecca E. Wardlaw, Asst. City Attorney
City Attorney's Office
P.O. Box 2248
Albuquerque, NM 87103
(505) 768-4500

-and-

Robin A. Goble
Conklin, Woodcock & Ziegler, P.C.
320 Gold Ave. SW, Suite 800
Albuquerque, NM 87102
(505) 224-9160

Attorneys for Defendants/Appellees/

ORAL ARGUMENT REQUESTED *Cross-Appellants*

TABLE OF CONTENTS

	Page
I. NATURE OF THE CASE AND COURSE OF PROCEEDINGS	1
II. SUMMARY OF RELEVANT FACTS AND PROCEEDINGS	2
A. The CBA Is Entered Into Pursuant To City Ordinances.....	2
B. APOA Received Discovery To Its Satisfaction.....	4
C. The City Makes A Prima Facie Case For Summary Judgment.....	6
D. APOA's Response To The City's Motion Falls Short	9
E. The Summary Judgment Hearing	11
F. The District Court Grants Summary Judgment For The City	14
III. ARGUMENT.....	15
A. Summary Judgment Was Properly Granted Because APOA Offered No Competent Evidence That The City Council Fully Funded The CBA By Appropriation In 2008 As APOA Claimed	15
1. Standards governing review.....	15
2. APOA's proffered evidence was insufficient to establish a foundational element of its breach of contract claim and create a genuine issue of material fact precluding summary judgment	19
B. Summary Judgment In The City's Favor Comports With Well- Established Authorities Addressing A Municipality's Fiscal Responsibilities And Annual Appropriation Powers.....	22
C. APOA's Arguments On Appeal Ignore Its Demonstrated Inability To Prove The Foundational Element Of Its Breach Of Contract Claim, And Rest On Flawed Premises.....	28

1. Section 10-7E-17(E) of the PEBA buttresses the summary judgment decision in the City’s favor 28

2. APOA’s evidence indicating the City Council “approved” the economic terms of the CBA did not establish that the City Council fully funded the CBA by appropriation in 2008 as APOA claimed 29

3. APOA’s argument that judicial enforcement of the CBA would not violate separation of powers is irrelevant because APOA cannot prove it is entitled to any such enforcement..... 30

4. APOA’s argument that municipalities may enter into a multi-year agreement without violating the Bateman Act if monies are appropriated to fully fund the agreement when it is approved misses the mark 31

IV. CONCLUSION..... 31

V. STATEMENT REQUESTING ORAL ARGUMENT..... 32

TABLE OF AUTHORITIES

Page

NEW MEXICO STATE CASES

<u>City of Rio Rancho v. Amrep Southwest, Inc.</u> , 2011-NMSC-037, 260 P.3d 414.....	15
<u>Ciup v. Chevron U.S.A., Inc.</u> , 1996-NMSC-062, 122 N.M. 537, 928 P.2d 263	16
<u>Clough v. Adventist Health Sys., Inc.</u> , 108 N.M. 801, 780 P.2d 627 (1989)	17
<u>Cuevis v. State Farm Mut. Auto Ins. Co.</u> , 2001-NMCA-038, 130 N.M. 539, 28 P.3d 527.....	18
<u>Dow v. Chilili Coop. Ass'n</u> , 105 N.M. 52, 728 P.2d 462 (1986)	16, 17
<u>Galvan v. City of Albuquerque</u> , 85 N.M. 42, 508 P.2d 1339 (Ct. App. 1973)	18
<u>Goffe v. Pharmaseal Labs., Inc.</u> , 90 N.M. 764, 568 P.2d 600 (Ct. App. 1976), <u>rev'd in part on other grounds</u> , 90 N.M. 753, 568 P.2d 589 (1977)	16, 17
<u>Goodman v. Brock</u> , 83 N.M. 789, 498 P.2d 676 (1972)	16
<u>Goradia v. Hahn Co.</u> , 111 N.M. 779, 810 P.2d 798 (1991).....	15
<u>Hamilton Test Sys., Inc. v. City of Albuquerque</u> , 103 N.M. 226, 704 P.2d 1102 (1985)	23, 26
<u>Int'l Ass'n of Firefighters v. City of Carlsbad</u> , 2009-NMCA-097, 147 N.M. 6, 216 P.3d 256.....	19, 24, 25, 29, 30, 31

Martinez v. Metzgar,
97 N.M. 173, 637 P.2d 1228 (1981) 18, 21

Montano v. Gabaldon,
108 N.M. 94, 766 P.2d 1328 (1989) 24

Paragon Found., Inc. v. State of N.M. Livestock Board,
2006-NMCA-004, 138 N.M. 761, 126 P.3d 527..... 16, 22

Parker v. E.I. Du Pont de Nemours & Co.,
121 N.M. 120, 909 P.2d 1 (Ct. App 1995) 18

Pedigo v. Valley Mobile Homes, Inc.,
97 N.M. 795, 643 P.2d 1247 (Ct. App. 1982) 18, 21

Portales Nat’l Bank v. Bellin,
98 N.M. 113, 645 P.2d 986 (Ct. App. 1982) 18, 21

Romero v. Philip Morris, Inc.,
2010-NMSC-035, 148 N.M. 713, 242 P.3d 280 17

Roth v. Thompson,
113 N.M. 331, 825 P.2d 1241 (1992) 16

San Juan Water Comm’n v. Taxpayers and Water Users of San Juan Cnty.,
116 N.M. 106, 860 P.2d 748 (1993) 23

Stambaugh v. Hayes,
44 N.M. 443, 103 P.2d 640 (1940) 17

NEW MEXICO FEDERAL CASES

Board v. Bd. Of Cnty. Comm’rs of Luna Cnty.,
Mem. Op. and Order, No. CIV 09-1185 WDS/GBW,
(D.N.M. Sept. 13, 2011)..... 27

CASES FROM OTHER JURISDICTIONS

<u>City of Stillwater, Okla. v. Int’l Ass’n of Fire Fighters, Local 2095,</u> 238 P.3d 926 (Okla. 2010).....	26
<u>United Faculty of Fla. v. Bd. Of Regents of the State of Fla.,</u> 365 So.2d 1073 (Fla. Dist. Ct. App. 1979).....	25

STATUTES

NMSA 1978, §3-12-3(A)(3) (1967)	22
NMSA 1978, §3-12-3(A)(8) (1967)	22
NMSA 1978, §6-6-11 (1968).....	8, 23, 27
NMSA 1978, §10-7E-17(E) (2003)	4, 12, 19, 21, 24, 25, 28, 29, 30, 31
NMSA 1978, §10-7E-18 (B)(2) (2003)	24
NMSA 1978, §10-7E-22 (2003)	30, 31
NMSA 1978, §10-7E-26(A) (2003)	28

RULES

Rule 1-012(B)(6) NMRA.....	1
Rule 1-056 NMRA.....	6, 16

OTHER AUTHORITIES

New Mexico Constitution, Article IX, Section 12	23, 26
N.M. Atty Gen. Op. No. 88-67 (1988)	26, 27
Albuquerque Charter, Art. IV, Section 10.....	22
Albuquerque, N.M., Revised Ordinances 1994, § 2-11-12 (1995)	4, 22, 23, 25
Albuquerque, N.M., Revised Ordinances 1994, § 2-11-15 (2001)	23
Albuquerque, N.M., Revised Ordinances 1994, § 3-2-18 (2002)	
.....	2, 3, 11, 12, 13, 19, 21, 25, 28, 29

I. NATURE OF THE CASE AND COURSE OF PROCEEDINGS

This appeal arises from the grant of summary judgment in favor of Defendants/Appellees City of Albuquerque, Albuquerque Police Department, and Mayor Richard Berry (collectively “the City”) on Plaintiffs/Appellants Albuquerque Police Officers’ Association, Joey Sigala, Felipe Garcia, Tom Novicki, and Matt Fisher’s (collectively “APOA”) Complaint For Breach Of Contract. [RP 1-4, 434-35] APOA claimed that the City breached a multi-year Collective Bargaining Agreement (“CBA”) executed in 2008 when it did not provide raises to police officers in Fiscal Year (“FY”) 2011 according to the schedule set forth in the CBA. [RP 1-6, 10-13]

APOA’s contract theory hinged on its allegations that, in approving the CBA in 2008, the City Council also appropriated all funds necessary to cover the annual pay increases, including the one contemplated for July 1, 2010. [RP 2-4] APOA contended the City was contractually obligated to implement the annual wage increases through the conclusion of the CBA on June 30, 2011. Id. The City moved for summary judgment, establishing that the CBA’s wage increases were contingent on annual appropriations being made by the City Council according to budgeting procedures, City ordinances, and governing law.¹ [RP 72-110]

¹ The City also filed a Rule 1-012(B)(6) NMRA Motion to Dismiss and a Motion to Dismiss on Grounds of Issue Preclusion. [RP 113-24, 127-52] Those motions were denied (RP 434), and are not the subject of this appeal or the related cross-appeal.

After reviewing all the parties' submissions and receiving oral argument, the district court determined that APOA failed to create a genuine issue of material fact regarding the City's showing that the CBA's wage increases were contingent on annual appropriations by the City Council. [TP-II, 41:2-17; 43:16-21] The order granting summary judgment was entered on August 22, 2011, and a timely notice of appeal was filed. [RP 434, 440-44]

II. SUMMARY OF RELEVANT FACTS AND PROCEEDINGS

A. The CBA Is Entered Into Pursuant To City Ordinances

In 2008, the City and APOA executed a CBA running from July 1, 2008 through June 30, 2011, for FYs 2009, 2010, and 2011. [RP 5-6] The CBA proposed annual raises for police department personnel based on employee rank within the department when raises were to take effect. [RP 10] The CBA also provided that its compensation commitments for the second and third fiscal years were contingent on approval by the City Council as set forth in § 3-2-18 of the City's Labor Management Relations Ordinance ("LMRO"). [RP 11]

Section 3-2-18 of the LMRO provides for City Council approval of proposed contracts and subsequent appropriation processes for multi-year CBAs that are consistent with the City's annual budget ordinance:

§ 3-2-18 CONSISTENCY WITH CITY BUDGET ORDINANCE.

Any contract between the city and an employee organization, which contains provisions that result in expenditures greater than the amount

appropriated for wages and benefits in an adopted city budget for the initial fiscal year of the contract or which contains a multi-year commitment shall require the review and approval by the City Council. In order for any contract to be approved by the City Council, the City Council must approve the economic components of the contract through an executive communication and adopt a resolution providing an appropriation or deappropriation or both to cover the cost of the contract. All such contracts shall contain re-opening language for economic items.

Albuquerque, N.M., Revised Ordinances 1994 (“ROA”), § 3-2-18 (2002).² [RP 102-03] Section 3-2-18’s express terms require two actions by the City Council before any cost of a CBA may be covered: (1) the City Council must first approve of the CBA’s economic components as offered through an executive communication; and (2) it must thereafter adopt a resolution as necessary to appropriate funds to cover costs. Id. The ordinance also makes clear that each CBA must contain re-opening language for economic items. Id. Thus, despite any City Council approval of a CBA’s economic terms pursuant to § 3-2-18, those economic terms remain subject to change during the course of the contract and to funding through related City Council appropriation actions. Id.

Consistent with § 3-2-18’s provisions, the City’s related budgeting ordinance similarly authorizes management of annual budgets through the City Council appropriation process:

² ROAs are available in full online at http://www.amlegal.com/albuquerque_nm/. The City’s LMRO is found in its entirety at ROA, §§ 3-2-1 through 3-2-18.

§ APPROVAL CONSTITUTES PROPOSAL AS BUDGET;
EXPENDITURES MUST BE AUTHORIZED.

(A) The annual operating budget appropriation resolution, as approved, in addition to other approved appropriations for operating purposes shall constitute the city's operating budget for the ensuing fiscal year. The city shall not expend any public funds, except for capital project expenditures, special assessment district expenditures, and trust and agency fund expenditures, unless the expenditure is authorized in the budget and is made or encumbered in the fiscal year covered by the budget.

ROA, § 2-11-12 (1995). [RP 286] Although the extent of the Public Employee Bargaining Act's ("PEBA") authority over the City's CBA with APOA is in dispute, consonant with these City ordinances, § 10-7E-17(E) of the PEBA similarly provides that employee salaries and benefits under collective bargaining agreements are contingent on the discretionary authority of governmental entities in managing and appropriating public funds. [RP 103-04]

B. APOA Received Discovery To Its Satisfaction

APOA's Complaint attached an executive communication relating to the CBA and a record regarding the City Council's approval of same. [RP 7-9] However, APOA did not attach any documents purporting to establish that, in 2008, the City Council also appropriated all the funds necessary in its annual budget for FY 2009 to cover the entire cost of the contract – including the proposed annual wage increases for all three fiscal years – as APOA claimed. [RP 1-13]

APOA obtained extensive documentary discovery from the City before the hearing on the City's motion for summary judgment. [RP 48-61, 66-71, 271, 293-94, 346-350] APOA's discovery requests sought information regarding how much revenue the City had during certain fiscal years, how the City allocated and spent the monies available to it during those years, how the City generated its economic forecasts regarding estimated revenues for FY 2011 and what those forecasts showed, and the City's ability to generate more revenue by increasing property or gross receipts taxes. [RP 48-61] In short, APOA's discovery efforts addressed how much money the City had, how it spent the money, and how it could raise taxes to get more. See id.

After filing a motion to compel regarding this discovery, APOA acknowledged that it received the requested discovery to its satisfaction, moved to vacate the hearing on its motion, and submitted a stipulated order for that purpose. [RP 271-72, 293-94] A second motion to compel relating to other discovery requests was also resolved to APOA's satisfaction when the City produced the documents at issue. [See RP 346-347 (Certificate of Service for Plaintiffs' Second Motion for Discovery); RP 348-50 (Defendant's Response to Plaintiffs' Second Motion for Discovery establishing that documents responsive to the discovery requests had been produced to APOA)]. No hearing was held on the second motion, APOA asserted no discovery grievances during the summary judgment

proceedings, and raised no Rule 1-056(F) NMRA concerns. [See RP 181-217, 326-31; TP-II, 18:15-34:4; 34:21-35:25; 38:5-39:11]

As part of the second document production, APOA received complete copies of the City's Budgets for FYs 2009, 2010, and 2011, reflecting how funds were appropriated during those years. [RP 349] Thus, by the time of the summary judgment hearing, APOA had available to it evidence showing how the City Council appropriated funds for all its various projects – including monies needed to cover the costs of the economic terms of the 2008 CBA with APOA – for all the fiscal years relevant to its claim. Id.

C. The City Makes A Prima Facie Case For Summary Judgment

The City moved for summary judgment, establishing that the CBA's proposed raises were aspirational in nature, and were contingent on the City Council making annual appropriations to implement the scheduled raises at its discretion according to its fiscal responsibilities and authority as the City's governing body. [RP 72-110; 276-290] The City further established that the City Council was faced with unprecedented economic challenges during the FY 2011 budgeting and appropriation process. Gross receipts taxes ("GRT") made up 64% of the General Fund Budget. [RP 77] GRT revenues declined 5.5% in FY 2009 and were trending at a 7.8% decline for FY 2010. Id. The City's unemployment rate had risen from a low of 2.9% in October 2007 to 8.9% by January 2010. Id.

The City had also lost 9,200 private job sectors from April 1, 2009 through April 1, 2010. Id. By the time of the April 1, 2010, submission of the Mayor's FY 2011 budget proposal to the City Council, the City's long range planning (Five Year Forecast) projected budget shortfall was \$66.6 million due to further decline in GRT and other revenues. Id.

As a result of the revenue shortfall carrying into FY 2011, City revenues would only support an appropriation level of \$455 million for FY 2011 as compared to the budgeted level of \$475 million for the previous fiscal year. [RP 77-78] Mayor Berry informed the City Council that he did not want to exacerbate the foregoing economic woes by increasing the City's unemployment rate through massive layoffs of City employees. [RP 78, 100] Instead, the Mayor proposed a sliding scale wage reduction plan whereby lower paid employees would incur a smaller pay cut than higher paid employees. Id. Such an approach ensured that "all City employees share the burden so that no single class of employee shoulders an unfair share of the reductions." Id.

The Mayor also proposed that funding for the pay raises for police and fire personnel that were scheduled for July 1, 2010 – expected to cost \$9.8 million – not be included in the FY 2011 budget. [RP 100] An alternative to these proposed labor cost reduction strategies was to balance the budget by eliminating 600, or 1 in 10, jobs in City government. Id.

The FY 2011 Budget was thereafter adopted in accordance with City ordinances through the customary process of negotiation between the Mayor and the City Council, with input from City employees, representatives of various collective bargaining units, other interested parties and the general public. [RP 77] The Budget was enacted by City Council Resolution R-10-58 on June 7, 2010 and included a wage decrease framework for all City employees according to a schedule in the Resolution. [RP 76-97] Thus, the City's summary judgment evidence established that covering yearly costs in the CBA was an annual appropriation activity, and that it acted consistent with City ordinances, budgeting procedures, and governing body authority when the City Council decided to not appropriate funds in 2010 to implement the FY 2011 raises for police department personnel as proposed under the 2008 CBA. [RP 72-110, 276-90]

The City's summary judgment motion further showed that APOA's breach of contract claim failed as a pure matter of law to the extent it rested on the theory that approval of the CBA in 2008 obligated the City Council to make future appropriations to fund the scheduled raises each year as they came due. Id. Summary judgment was proper on any such contract theory under NMSA 1978, § 6-6-11 (1968), the Bateman Act's prohibition against municipalities becoming indebted or contracting debt of any kind which is not and cannot then be paid out of the money actually collected and belonging to that current year. [RP 74-75,

101-10, 276-90] Summary judgment was similarly justified by state constitutional provisions, City ordinances, and other authorities restricting municipal debt to annual budgets and recognizing a governing body's flexibility in appropriation matters involving public employee CBAs. Id. The City demonstrated that these authorities – which mandate that municipalities live within their annual budgets and not commit to paying debt in one year by obligating revenue in future years – supported the City Council's exercise of discretionary annual appropriation authority regarding the CBA's proposed wage increase for FY 2011. Id.

D. APOA's Response To The City's Motion Falls Short

In opposing the City's summary judgment, APOA provided no evidence to dispute the City's prima facie showing that the CBA's economic terms were subject to the City Council's annual appropriation decisions and to support APOA's claim that, in 2008, the City specifically appropriated all the funds necessary to cover the costs for the entire three-year term of the CBA. [See RP 181-217, 326-31; see also RP 187 (assertion by APOA that funds were "specifically appropriated in FY 2008 (sic) for the three-year term of the CBA")] Even though it had obtained a copy of the City's FY 2009 budget during discovery [RP 349], APOA did not offer it as evidence that the multi-year CBA was totally funded by a one-time appropriation in FY 2009, or to dispute the City's showing that the CBA pay raises were aspirational in nature and were contingent on annual

appropriations by the City Council in the exercise of its judgment. [See RP 181-98; 326-31]

Instead, APOA largely ignored the “appropriation” issue and argued that the City had funds “available” which it could have appropriated differently to cover the July 1, 2010 raises under the CBA. [RP 181-98; see e.g., RP 182 (arguing that “monies spent for other projects could have been used to honor the collective bargaining agreement” and that “[t]he City does not contend that the funds to honor this contract were not available or could not have been raised in various methods available, such as raise the quarter cent sales tax allocated to public safety”)]

APOA’s supporting affidavits offered similar personal opinion and subjective belief testimony about “available” money or methods for generating more revenue to fund the proposed raises. [See RP 200 (former City employee expressing his “opinion” that the City “could have paid for all the raises called for in the CBA for the 2008-2010 fiscal years in 2008, if needed”); RP 204-06 (economist affidavit opining as to various tax options available to the City to generate revenue sufficient to cover the FY 2011 police pay raise under the CBA); RP 216 (accountant affidavit offering conclusory “beliefs” that the City could have paid for the entire CBA from monies in the general fund in 2008, that it was not necessary to cut police officer wages to balance the budget in FY 2011, and that

there were other means available to both fund the CBA and balance the budget for FY 2011)]

APOA's only submissions regarding the alleged 2008 appropriation were an exhibit to its Complaint and one affiant's personal "belief" that the City "appropriated all the funds for [the CBA] upon passage of the Council Resolution in 2008." [RP 7-9, 200] However, the complaint's exhibit addressed only the City Council's approval of the CBA's economic terms as proffered by executive communication pursuant to LMRO § 3-2-18. [RP 7-9] It did not reflect that any funds had actually been committed by a formal appropriation resolution. Id.

Moreover, APOA did not submit a copy of the FY 2009 Budget resolution to prove its allegation that funds were fully appropriated for the CBA in 2008 or its affiant's expressed "belief" in that regard. [See RP 181-98; 326-31] Nor did APOA attach any authenticated documentation to the affidavit to support the affiant's conclusory assertion that all the funds for the CBA were appropriated in 2008 "upon passage of the Council Resolution." [See RP 199-201]

E. The Summary Judgment Hearing

At the hearing on the City's summary judgment motion, the district court noted that the issue most critical to APOA's breach of contract complaint was whether the CBA was fully funded by appropriation in 2008 as APOA alleged in support of its complaint. [TR-II, 5:11-6:2] In reaching that conclusion, the

district court relied not only on APOA's contract theory as alleged in its complaint, but also on § 10-7E-17 of the PEBA and § 3-2-18 of the City's LMRO, both of which recognize that funding for the economic terms of a CBA are contingent on appropriation decisions by the municipality. [TR-II, 8:4-13; 19:25-20:24] The district court also noted that other arguments raised by the City based on statutory and constitutional provisions restricting municipal debt under annual budgets were operative in the analysis. [RP 5:22-6:2]

APOA acknowledged repeatedly during oral argument that, to survive summary judgment, it bore the burden of providing evidence sufficient to establish that the City had actually appropriated all the monies necessary in 2008 to fully fund the CBA through its conclusion in FY 2011. [TR-II, 18:15-25; 27:20-28:3; 33:5-10] APOA also conceded that its breach of contract theory was founded on first proving that the money was appropriated to fund the CBA in full in 2008 before the issue of availability became material. [TR-II, 30:6-12]

Having carefully reviewed all the attachments to APOA's complaint, the district court advised that it did not see any factual support for APOA's allegation that funds were appropriated in 2008 to fully pay for the cost of the CBA through FY 2011. [TR-II, 19:1-19] The district court noted that § 3-2-18 of the City's LMRO established a two-part process requiring both approval *and* appropriation by resolution before costs of a CBA would be funded. [TR-II, 20:13-24]

(Emphasis added.) The documents attached to APOA's Complaint showed only that the City Council reviewed the CBA in 2008 and approved it – but not that it fully appropriated the funds as APOA claimed. [TR-II, 19:1-20:24]

APOA's only other proposed evidence that the City Council fully funded the CBA by appropriation in 2008 was the affidavit testimony of Paul Broome. [TR-II, 21:3-24:7; 34:21-35:25] Mr. Broome expressed his "belief" that the City "appropriated all the funds for [the CBA] upon passage of the Council Resolution in 2008." [RP 200] When asked what Council Resolution Mr. Broome was referencing, APOA referred the district court to the complaint exhibit the court had already determined failed to prove how much funds were appropriated in 2008. [TR-II, 34:21-35:25]

Mr. Broome's affidavit was also replete with conclusory assertions, subjective opinions, and other expressed "beliefs" irrelevant to proving the appropriation issue. [See e.g. RP 200 (¶ 7 attesting that the City "regularly enters into multi-year contracts" like the CBA with APOA; ¶ 8 offering hearsay testimony that he was "advised by the City's legal department that [the CBA] with APOA was legal, in all respects, to include the State Constitution and the Bateman Act"; ¶s 9-10 stating the City Council approved the CBA and its wage increases pursuant to LMRO § 3-2-18; ¶ 12 expressing his "opinion" that the City "could have paid for all the raises called for in the CBA for the 2008-2010 fiscal years in

2008, if needed”; and ¶ 15 opining that the City will have no ability to negotiate CBAs if it is at liberty to change its contractual obligations and choose not to appropriate funding to cover the economic obligations contained in CBAs)]

In light of APOA’s limited offerings on the foundational issue of “appropriation,” APOA primarily argued at hearing that funds were available to appropriate differently to have paid for the FY 2011 raises in 2008 and/or in 2010 as proposed under the CBA. APOA also contended that the City had sufficient resources currently on-hand, or revenue generating options available to it, to fund the raises now. [TR-II, 24:9-34:4] APOA argued funds are “available” to pay for the FY 2011 CBA wage increases if there is any money in the City’s budget, notwithstanding the City’s other obligations. [TR-II, 25:20-26:7] Finally, APOA urged that summary judgment be denied so that it could present additional testimony at trial from Mr. Broome and APOA’s other affiants so that the facts on the appropriation and availability issues could be “fleshed out.” [TR-II, 27:20-28:6; 32:19-24; 33:11-34:4]

F. The District Court Grants Summary Judgment For The City

The district court reasoned that APOA’s “availability” argument necessarily invited the court to interject itself into the City’s budgeting and appropriation processes to order the City Council to appropriate its funds differently so that the CBA wage increases for FY 2011 could be paid. [TR-II, 40:14] While

recognizing that the PEBA contained language making CBA funding contingent on monies being “appropriated and available,” the district court was reluctant to construe that language to authorize it to “tread directly on matters that are specifically reserved to two other branches of government.” [TR-II, 40:9-25]

The district court concluded that APOA’s evidence was inadequate to support its breach of contract theory based on full appropriation in 2008, or to create any genuine issue of material fact regarding the City’s showing that monies to fund the proposed raises in the CBA were subject to the City Council’s annual appropriation budgeting decisions. [TR-II, 39:12-43:21] The district court then granted summary judgment in the City’s favor on APOA’s breach of contract complaint. [TR-II, 43:15-21]

III. ARGUMENT

A. Summary Judgment Was Properly Granted Because APOA Offered No Competent Evidence That The City Council Fully Funded The CBA By Appropriation In 2008 As APOA Claimed

1. Standards governing review.

Because this appeal arises from a grant of summary judgment, this Court’s standard of review is de novo. City of Rio Rancho v. Amrep Southwest, Inc., 2011-NMSC-037, ¶ 14, 260 P.3d 414. A primary purpose of the summary judgment rule is to isolate and dispose of factually unsupported claims. Goradia v. Hahn Co., 111 N.M. 779, 782, 810 P.2d 798, 801 (1991). Summary judgment is

intended to expedite litigation by determining whether a plaintiff possesses competent evidence to support his claims so as to raise genuine issues of material fact and, if he has not, then to dispose of the matters at that stage of the proceeding. Goffe v. Pharmaseal Labs., Inc., 90 N.M. 764, 768, 568 P.2d 600, 604 (Ct. App. 1976), rev'd in part on other grounds, 90 N.M. 753, 568 P.2d 589 (1977).

Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 1-056(C) NMRA; Ciup v. Chevron U.S.A., Inc., 1996-NMSC-062, ¶¶ 5-6, 122 N.M. 537, 928 P.2d 263. The moving party may establish a prima facie case for summary judgment if, through discovery, it appears that the non-moving party cannot factually establish an essential element of its claims. Paragon Found., Inc. v. State of N.M. Livestock Bd., 2006-NMCA-004, ¶ 11, 138 N.M. 761, 126 P.3d 527. A prima facie showing is “such evidence as is sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted.” Goodman v. Brock, 83 N.M. 789, 792-93, 498 P.2d 676, 679-80 (1972). Once the defendant has made a prima facie showing to support summary judgment, the burden shifts to the plaintiff “to demonstrate the existence of specific evidentiary facts which would require a trial on the merits.” Roth v. Thompson, 113 N.M. 331, 335, 825 P.2d 1241, 1245 (1992).

In opposing summary judgment, a plaintiff may not simply argue that evidentiary facts might exist, nor rest on the allegations of the complaint. Dow v. Chilili Coop. Ass'n,

105 N.M. 52, 55, 728 P.2d 462, 465 (1986). Rather, a plaintiff must adduce evidence sufficient to justify a trial on the issues. Clough v. Adventist Health Sys., Inc., 108 N.M. 801, 803, 780 P.2d 627, 629 (1989). Although inferences should be drawn in the nonmoving party's favor, "[t]he inferences, which the party opposing the motion for summary judgment is entitled to have drawn from all the matters properly before and considered by the trial court, must be *reasonable* inferences." Goffe, 90 N.M. at 766, 568 P.2d at 603 (emphasis in original) (cited authority omitted).

"An inference is not a supposition or a conjecture, but is a logical deduction from facts proved and guess work is not a substitute therefor." Stambaugh v. Hayes, 44 N.M. 443, 451, 103 P.2d 640, 645 (1940) (internal citation omitted). Unreasonable inferences drawn from disputed facts cannot serve as a basis for denying summary judgment. Romero v. Philip Morris Inc., 2010-NMSC-035, ¶ 10, 148 N.M. 713, 242 P.3d 280. "Only when the inferences are reasonable is summary judgment inappropriate. Id.

Moreover, the allegedly disputed facts must be material for a party to survive summary judgment. Id. ¶ 11. In determining which disputed facts are material, the court must look to the substantive law governing the dispute and focus its inquiry on whether, under that substantive law, the disputed fact is necessary to give rise to a claim. Id. (cited authorities omitted). "A fact is material for the purpose of determining whether a motion for summary judgment is

meritorious if it will affect the outcome of the case.” Parker v. E.I. Du Pont de Nemours & Co., 121 N.M. 120, 124, 909 P.2d 1, 5 (Ct. App. 1995). If the material facts are not in dispute, but only the legal effect of the facts is presented for determination, then summary judgment may properly be granted. Cuevis v. State Farm Mut. Auto. Ins. Co., 2001-NMCA-038, ¶ 6, 130 N.M. 539, 28 P.3d 527.

To merit consideration, affidavits submitted in opposition to summary judgment must set forth facts that are admissible in evidence and explain their conclusions. Galvan v. City of Albuquerque, 85 N.M. 42, 44-45, 508 P.2d 1339, 1341-42 (Ct. App. 1973). Conclusory assertions in affidavits, which are unsupported by fact, are not sufficient to raise a genuine issue of material fact. Portales Nat’l Bank v. Bellin, 98 N.M. 113, 117, 645 P.2d 986, 990 (Ct. App. 1982). Belief or opinion affidavit testimony, regardless of its sincerity, is not equivalent to personal factual knowledge. Martinez v. Metzgar, 97 N.M. 173, 175, 637 P.2d 1228, 1230 (1981). Where an affidavit is no more than self-serving speculation and is factually-unsupported opinion testimony, the affidavit is not sufficient to defeat a summary judgment motion. Pedigo v. Valley Mobile Homes, Inc., 97 N.M. 795, 798, 643 P.2d 1247, 1250 (Ct. App. 1982).

2. APOA's proffered evidence was insufficient to establish a foundational element of its breach of contract claim and create a genuine issue of material fact precluding summary judgment.

The City's budgeting and LMRO ordinances provided for City Council annual appropriations for funding the CBA at the council's discretion under its budgeting authority and fiscal responsibilities. [RP 102-03, 286] Section 3-2-18 of the LMRO made clear that, even when economic items in a CBA had City Council approval, those economic terms could only be implemented by City Council resolution appropriating the necessary funding, and remained subject to change under mandatory re-opening language in each contract. [RP 102-03]; see also NMSA 1978, § 10-7E-17(E) (2003) (providing that an agreement provision in a CBA "that requires the expenditure of public funds shall be contingent upon the specific appropriation of funds by the appropriate governing body"); Int'l Ass'n of Firefighters v. City of Carlsbad, 2009-NMCA-097, ¶ 13, 147 N.M. 6, 216 P.3d 256 (relying on § 10-7E-17(E) in determining that, in enacting the PEBA, the Legislature "continued to leave to governmental entities the ability to manage and appropriate their public funds").

The City's FY 2011 budgeting process was greatly impacted by declining revenues and unprecedented economic pressures. [RP 77-78, 100] It was within this context that the City Council decided to forego appropriating the monies necessary to fund the CBA's aspirational raises for police department personnel for

July 1, 2010 and, instead, implemented a sliding scale wage reduction plan for all City employees. [RP 76-100] An alternative to these labor cost savings strategies was to balance the budget by eliminating 600 jobs in City government. [RP 100]

The City supported its motion with authenticated documents regarding the budgeting activities surrounding FY 2011 and a copy of the City Council Resolution R-10-58 reflecting its final FY 2011 appropriation decisions. [RP 76-100] The City's submissions established that the issue of whether to appropriate funds *in 2010* to cover the cost of implementing the CBA's proposed raises scheduled for July 1 was considered *during* the City's annual budgeting process for FY 2011. This evidence showed that the CBA's funding was handled via annual appropriation and budgeting processes, and refuted APOA's allegations that, in 2008, the City Council had previously appropriated all the funds necessary to cover the entire cost of the CBA through FY 2011.

APOA's only offerings in efforts to dispute the City's evidence and support APOA's claim that the CBA was fully funded by appropriation in 2008 were unauthenticated documents attached as Exhibit B to its complaint and the Broome affidavit. [RP 7-9, 199-201; TR-II, 21:3-24:7; 34:21-35:25] The district court correctly concluded that this evidence was legally insufficient to create any genuine issue of material fact. The complaint's attachments demonstrated only that the City Council had *approved* the CBA under procedures set forth in LMRO

§ 3-2-18. However, approval is only the first step in the process under § 3-2-18 – the City Council must also adopt a formal resolution before funds are actually appropriated. See also NMSA 1978, § 10-7E-17(E) (providing that economic terms in a CBA are contingent on appropriations by the governing body).

The Broome affidavit's conclusory assertions, opinions, and subjective beliefs similarly fell far short of proving APOA's breach of contract claim or creating a material factual dispute under summary judgment evidentiary standards. See Portales Nat'l Bank, 98 N.M. at 117, 645 P.2d at 990; Martinez, 97 N.M. at 175, 637 P.2d at 1230; Pedigo, 97 N.M. at 798, 643 P.2d at 1250. APOA's proffered evidence and argument on the issue of "availability" was irrelevant given that it could not prove total appropriation in 2008 – the primary foundational element of APOA's breach of contract claim.

Despite having obtained substantial documentary discovery regarding the City finances, budgeting, and appropriation activities for the years relevant to its claims – including the FY 2009 Budget – APOA offered none of those documents in support of its case. The reasonable inference to draw from APOA's failure to do so is that the documents for FY 2009 did not show that, in 2008, the City Council adopted a resolution that appropriated monies necessary to fully fund all the economic items of the 2008 CBA through its termination on June 30, 2011 as APOA claimed.

On appeal, APOA admits that its breach of contract claim depends on whether funding for three full years of wage and benefit increases under the CBA was appropriated in 2008. Brief-in-Chief at p. 2. Because APOA could not prove this essential element of its breach of contract theory, summary judgment was properly granted in the City's favor. See Paragon Found., Inc., 2006-NMCA-004, ¶11 (summary judgment is proper when the nonmoving party cannot establish an essential element of its claim).

B. Summary Judgment In The City's Favor Comports With Well-Established Authorities Addressing A Municipality's Fiscal Responsibilities And Annual Appropriation Powers

The City Council is statutorily vested with the power to “manage and control the finances . . . belonging to the municipality” and to “prescribe the compensation . . . to be paid municipal officers and employees.” NMSA 1978, § 3-12-3(A)(3) and § 3-12-3(A)(8) (1967); see also Albuquerque Charter, Art. IV, Section 10 (providing that the City Council elected by the people will “[r]eview, approve or amend and approve all budgets of the city”). Related City ordinances, statutes, and constitutional mandates require that the City Council exercise its fiscal duties responsibly while managing and appropriating the public funds in its care.

ROA § 2-11-12 prescribes that the City “shall not expend any public funds . . . unless the expenditure is authorized in the budget and is made or encumbered in the fiscal year covered by the budget.” Albuquerque, N.M., Revised Ordinances

1994, § 2-11-12 (1995). Should the City Council amend the budget during the fiscal year, such amendment may not result in total expenditures that exceed the resources available for the fiscal year to which the budget is applicable. Albuquerque, N.M., Revised Ordinances 1994, § 2-11-15 (2001).

The Bateman Act similarly limits a local government's yearly expenditures to its annual income:

It is unlawful for any . . . municipal governing body . . . for any purpose whatever to become indebted or contract debts of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year, and any indebtedness for any current year which is not paid and cannot be paid, as above provided for, is void.

NMSA 1987, § 6-6-11 (1968). The Bateman Act requires municipalities to "live within their annual incomes." San Juan Water Comm'n v. Taxpayers and Water Users of San Juan Cnty., 116 N.M. 106, 111, 860 P.2d 748, 753 (1993) (cited authority omitted).

Article IX, Section 12 of the New Mexico Constitution is another restriction on municipal indebtedness. The provision prohibits a municipality from entering into an agreement that obligates it to pay out of tax revenues, and commits itself beyond revenues for the current fiscal year, unless the municipality obtains voter approval. Hamilton Test Sys., Inc. v. City of Albuquerque, 103 N.M. 226, 227-229, 704 P.2d 1102, 1103-1105 (1985). Indeed, it has been recognized that, "[a]n

agreement that commits the [governing body] to make payments out of general revenues in future fiscal years, without voter approval, violates the New Mexico Constitution even if that obligation is merely an ‘equitable or moral’” or “contingent” duty. Montano v. Gabaldon, 108 N.M. 94, 95-96, 766 P.2d 1328, 1329-30 (1989) (cited authorities omitted).

When efforts to enforce the economic terms of public employee CBAs have been balanced against the governing body’s fiscal responsibilities, related appropriation powers, and constitutional limitations on debt, courts have held that the CBA terms must give way. In Int’l Ass’n of Firefighters, this court addressed whether the City of Carlsbad could be ordered to appropriate monies to fund an arbitration award of wage increases rendered under the PEBA’s impasse procedures. 2009-NMCA-097, ¶¶ 2-4. The court noted that, “while the Legislature required that any arbitration be final and binding, it subjected it to the contingency of the appropriation and availability of funds” Id. ¶ 13 (referring to the PEBA §§ 10-7E-18(B)(2) and 10-7E-17(E)). The court disagreed with the Union that the Legislature, through the PEBA, elevated “the need for binding arbitration above the stability of public funds.” Id. Instead, the PEBA’s appropriation provision made clear the Legislature “continued to leave governmental entities the ability to manage and appropriate their public funds.” Id.

Courts elsewhere have reached similar results as Int'l Ass'n of Firefighters in resolving tensions between CBAs and the governing body's appropriation powers. In United Faculty of Fla. v. Bd. of Regents of the State of Fla., 365 So.2d 1073, 1079 (Fla. Dist. Ct. App. 1979), the appellate court affirmed the Board's decision not to allocate funds required to meet negotiated raises in a CBA between the parties. Noting that a Florida statute expressly reserved the right to appropriate "less than the amount requested" to fund the CBA, the court reasoned:

That the Legislature might not provide full funding for the collective bargaining agreement was a contingency well known to the parties before, during and after negotiations. The agreement was entered into with full knowledge and in contemplation of the Legislature's appropriative prerogatives vis-à-vis the negotiated product. The agreement embodied the contingency of underfunding just as surely as if it had been expressly recited therein.

Id. at 1078; compare with ROA § 2-11-12 and § 3-2-18 (making funding of CBA costs subject to annual appropriations by City Council) and NMSA 1978, § 10-7E-17(E) (providing that a CBA's economic terms are contingent on appropriations by the governing body). The Florida court also noted that, even if appropriations for the raises were free of all legislative restrictions, the union's argument would be flawed because "a ruling that each and every collective bargaining agreement is entitled to its allocation 'off the top' of the employer's aggregate appropriations would inevitably bring at least two such agreements into irremediable collision."

Id.

In City of Stillwater, Okla. v. Int'l Ass'n of Fire Fighters, Local 2095, 238 P.3d 926 (Okla. 2010), the Supreme Court of Oklahoma relied on a constitutional provision similar to New Mexico's Article IX, Section 12 in determining that planned raises in a multi-year CBA could not be enforced. Oklahoma's Constitution provided that no city "shall be allowed to become indebted, in any manner, or for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year" without voter approval. Id. at 930. In reaching its holding that the raises were void, the court stated:

Our previous cases are consistent that a previous year's agreement cannot be used to set subsequent year's salaries of municipal employees because the municipality cannot create an obligation in one year that results in a debt in a succeeding year. (Internal citation omitted.) Our state constitution forbids the City of Stillwater from becoming indebted 'in any manner' when that debt is created in a previous year.

Id. The purpose behind Oklahoma's constitutional provision was to force cities to operate on a cash basis, and to prevent debt payable out of tax revenues from extending beyond one year. Id.; see also Hamilton Test Sys., Inc., 103 N.M. at 227-229, 704 P.2d at 1103-1105 (New Mexico Constitution prohibits a municipality from entering into an agreement that obligates it to pay from tax revenues, and commits itself beyond revenues for the current fiscal year, absent voter assent); N.M. Att'y Gen. Op. No. 88-67 (1988) (multi-year employment

contract that coerced subsequent commission's appropriation power, and which had not been submitted to the voters for approval, was an unconstitutional debt).

The common thread running through all these authorities is the policy that the public's interests in the orderly and fiscally responsible operation of its government are paramount to public employees' personal interests under collective bargaining agreements. These authorities also demonstrate that the City's management of the CBA's terms via the exercise of annual appropriating authority avoid running afoul of statutory and constitutional debt restrictions, and constitute additional support for its prima facie showing of entitlement to summary judgment. To the extent APOA's breach of contract theory rested on the City purportedly becoming obligated, in 2008, to appropriate funds in future years to cover the CBA's aspirational raises as they came due, these authorities clearly establish that any such claim fails as a pure matter of law.³

³ Plain language in the Bateman Act casts doubt on the viability of APOA's "full" appropriation contract theory in stating: "Any officer of any . . . municipality . . . who shall at any time use the fund belonging to any current year for any other purpose than paying the current expenses of that year . . . is guilty of a misdemeanor." NMSA 1978, § 6-6-11 (emphasis added). This language indicates that City officials would be subject to criminal prosecution if they fully appropriated funds from FY 2009 for the CBA and used those funds later to pay wages earned as they came due in subsequent years. See Borde v. Bd. of Cnty. Comm'rs of Luna Cnty., Mem. Op. and Order, No. CIV 09-1185 WDS/GBW, n.3 (D.N.M. Sept. 13, 2011); but see N.M. Att'y Gen. Op. No. 88-67 (1988) (opinion that multi-year employment agreement for which funds were fully appropriated at time of making may not violate the Bateman Act). Even if a legally viable theory, summary judgment was properly granted for APOA's failure of proof.

C. APOA's Arguments On Appeal Ignore Its Demonstrated Inability To Prove The Foundational Element Of Its Breach Of Contract Claim, And Rest On Flawed Premises

The record on appeal and relevant authorities soundly support summary judgment in the City's favor on APOA's breach of contract complaint. APOA's points on appeal provide no grounds for reversing the district court's summary judgment decision.

1. Section 10-7E-17(E) of the PEBA buttresses the summary judgment decision in the City's favor.

Section 10-7E-17(E) of the PEBA does not, as APOA argues, "mandate" that the City appropriate the monies needed to fully fund a CBA at the time the City approves it.⁴ The statute's plain language proves just the opposite. Section

⁴ The City's LMRO governs its collective bargaining activities and CBAs with its employees, and was in place before the PEBA was enacted. The PEBA provides grandfathered status to the City's LMRO. See NMSA 1978, § 10-7E-26(A) (2003) (providing that a public employer that, prior to 1991, adopted a system of collective bargaining with its employees may continue to operate under those provisions and procedures). APOA's CBA with the City made expressly clear that it was being entered into in accordance with § 3-2-18 of the City's LMRO. [RP 11] The City's reference to, and discussion herein, of various provisions of the PEBA as considered by the district court and argued by APOA is not a concession that any particular provision of the PEBA supplants the City's own LMRO provisions, governs the CBA, or "mandates" what the City must do. The grandfathering issues will be addressed in the City's cross-appeal. Because the PEBA and LMRO provisions being discussed in APOA's appeal are either consonant with each other and thus, embody a similar public policy, or the PEBA provisions as argued by APOA do not mean what it claims, the City's related analysis and rebuttal in its Answer Brief should not be construed as a concession of any issues relevant to its cross-appeal.

10-7E-17(E) states that a provision of any agreement entered into that requires the expenditure of funds “shall be contingent upon” the appropriation of funds by the governing body. APOA’s proposed interpretation of § 10-7E-17(E) not only conflicts with its plain meaning, but also with Int’l Ass’n of Firefighters’ holding that, through § 10-7E-17(E) of the PEBA, the Legislature “continued to leave governmental entities the ability to manage and appropriate their public funds.” 2009-NMCA-097, ¶ 13.

2. APOA’s evidence indicating the City Council “approved” the economic terms of the CBA did not establish that the City Council fully funded the CBA by appropriation in 2008 as APOA claimed.

Under § 3-2-18 of the City’s LMRO, City Council “approval” of a CBA and “appropriation” by resolution to fund its economic terms are two separate actions. *Supra* at pp. 2-4; see also RP 79-97 (City Council Resolution R-10-58 appropriating funds for the FY 2011 budget). APOA’s allegation that, in 2008, the City appropriated all the monies needed to pay for all the economic items of the CBA through its conclusion on June 30, 2011 was the foundational element of its breach of contract theory. The “approval” documents attached to its Complaint, and the Broome affidavit “belief” testimony, were legally inadequate to prove appropriation in 2008, or to create a genuine issue of material fact regarding the City’s showing that funding for the CBA was contingent on, and accomplished through, annual appropriations by the City Council. *Supra* at pp. 6-21. APOA’s

contention it “can be assumed” that appropriations to fully fund the CBA occurred in 2008 simply because the economic terms were approved then is not a “reasonable inference” that can be drawn from the record on appeal. Rather, it is an unreasonable leap of logic.

3. APOA’s argument that judicial enforcement of the CBA would not violate separation of powers is irrelevant because APOA cannot prove it is entitled to any such enforcement.

To survive summary judgment, APOA had to first get over the “appropriation” burden of proof – which it could not do. *Supra* at pp. 9-21. Its contention that judicial enforcement of the CBA would not violate separation of powers flows out of APOA’s “availability” of funds argument – which it rightly conceded at hearing is not material until it has shown “appropriation.” [TR-II, 30:6-12] Thus, even assuming that the theoretical relief argued by APOA could be provided, summary judgment was still proper given that APOA could not establish the foundational element of its breach of contract claim.

APOA’s enforcement argument also fails under the plain language of § 10-7E-17(E) and the holding in Int’l Ass’n of Firefighters. Despite § 10-7E-22’s recognition that collective bargaining agreements are generally enforceable, § 10-7E-17(E) makes clear that economic terms remain subject to the appropriating powers of the governing body. Thus, the enforcement that is authorized by § 10-7E-22 is necessarily limited by the Legislature’s decision to continue “to leave

governmental entities the ability to manage and appropriate their public funds” via § 10-7E-17(E). Int’l Ass’n of Firefighters, 2009-NMCA-097, ¶ 13. The holding in Int’l Ass’n of Firefighters and the plain language of § 10-7E-17(E) refute APOA’s contention that § 10-7E-22 generally authorizes the courts to invade a municipality’s appropriation powers and direct the allocation of public funds.

4. APOA’s argument that municipalities may enter into a multi-year agreement without violating the Bateman Act if monies are appropriated to fully fund the agreement when it is approved misses the mark.

Assuming that APOA’s contract theory resting on its allegation that, in 2008, the City fully appropriated all funds needed to cover the entire costs of the CBA stated a legally viable cause of action (see supra at p. 27, n.3), APOA had no competent evidence to prove that funds were fully appropriated in 2008 as it claimed. In contrast, the City demonstrated that – consistent with ordinances, statutes, and constitutional restraints on municipal debt – its CBA with APOA was funded on a yearly basis by appropriation via the City’s annual budgeting process. To survive summary judgment, APOA had to produce legally sufficient evidence that the CBA, instead, was fully funded in 2008. Because APOA had no such evidence, summary judgment was properly granted.

IV. CONCLUSION


For all the foregoing reasons, the City requests that the district court’s grant of summary judgment in its favor be affirmed.

V. STATEMENT REQUESTING ORAL ARGUMENT

The City requests oral argument because the issues on appeal involve matters of public importance having the potential to affect the operation of the largest city in the state, as well as public collective bargaining throughout the state.


Respectfully submitted,

CITY ATTORNEY'S OFFICE

By 
David Tourek, City Attorney
Rebecca E. Wardlaw, Asst. City Attorney
P.O. Box 2248
Albuquerque, NM 87103
(505) 768-4500

- And -

CONKLIN, WOODCOCK & ZIEGLER, P.C.

By 
Robin A. Goble
320 Gold Ave. SW, Suite 800
Albuquerque, NM 87102
(505) 224-9160

*Attorneys for Defendants/Appellees/
Cross-Appellants*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of Defendants/Appellees' Answer Brief were served by U.S. First Class Mail on the following counsel of record this 31st day of May, 2012:

Attorneys for Plaintiffs/Appellants/Cross-Appellees:

Rose Bryan
Rose Bryan P.C.
P.O. Box 1966
Albuquerque, NM 87103-1966

Frederick M. Mowrer
Sanchez, Mowrer & Desiderio, P.C.
P.O. Box 1966
Albuquerque, NM 87103-1966



Robin A. Goble