

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

MARIO ALDERETE, DONALD
MEDINA, JESSE SERNA, GEORGE
ALLEN WYLER, JERONIMO
RIVERA, GILBERT KOZLOWSKI,
RICHARD BARROS, JOSEPH
TAFOYA, ANGELO GALLEGOS,
and MIKE FARIAS,

Plaintiffs-Appellants,

vs

AMERICAN FEDERATION OF
STATE, COUNTY AND
MUNICIPAL EMPLOYEES 3022,

Defendant-Appellee.

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE

FILED

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Wendy Fjmes

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No. 33,380

Bernalillo County

D-202-CV-2012-3136

REPLY BRIEF

Appeal from Decision of the Honorable Beatrice Brickhouse, Second Judicial District Court.

Submitted by:

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ORAL ARGUMENT IS REQUESTED

Plaintiffs request an Oral Argument stating that this is a matter of public importance that effects not only Plaintiffs' union rights, but also all the public employee's union rights.

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ARGUMENT

A. THERE WAS A BREACH OF THE CBA

Defendant AFSCME states in its Answer Brief that there was no violation of the CBA and therefore, AFSCME owed no duty to Plaintiffs. However, this is not accurate. AFSCME has confused and clouded the issue of the CBA dependence on the City of Albuquerque's Personnel Rules and Regulations. Plaintiffs have argued all along in this case that the CBA must be read in conjunction with the City of Albuquerque's Personnel Rules and Regulations to be interpreted.

In *Carroll v. City of Albuquerque*, 749 F.Supp.2d 1216, 1231 (D.N.M.,2010), the U.S. District Court for the District of New Mexico stated:

Carroll has characterized his claims as breach-of-implied-employment-contract claims. He alleges that the Inter-Office Memorandum, the Personnel Rules and Regulations, the Merit System Ordinance, and the Procedures Manual, give rise to his implied contract claims. Carroll alleges that the policies set forth in these documents are independent of the CBA. The Court, however, finds that these documents are interdependent on the CBA. *See Henderson v. Merck & Co.*, 998 F.Supp. 532, 538 (E.D.Pa.1998) ("Any contract [allegedly] formed by the employment manual would be concurrent with a collective bargaining agreement."). The City of Albuquerque has identified several sections of the CBA that are material to its actions, which Carroll contends breached the alleged implied employment contract, including sections regarding pay provisions, salary schedule, seniority determination, promotional procedures, and policies and classification/recognition. With these sections of the CBA in mind, it appears that a determination whether the City of Albuquerque "breached the terms" of the implied employment contract "would require interpretation" of certain provisions in the CBA. *Galway v. Smith's Food and Drug Center, Inc.*, No. 94-4224, 1995 WL 734423, at *2 (10th Cir. Dec. 11, 1995).


Id.

In this case, the Plaintiffs have alleged that in order for the City of Albuquerque to set the salary of an newly hired or promoted M 14, the City must consult the CBA pay schedule. [*AFSCME Answer Brief page 13; RP 263-265*]. The City cannot deviate from the entry level pay, Step 2, unless the City follows its own personnel policy which requires special approval to place an newly promoted or hired employee above the Step 2 pay rate. [*RP 263-265*]. AFSCME had a duty to Plaintiffs to file a grievance requesting why the City deviated from the entry level Step 2 pay for an M14 as stated in the CBA. If the City had followed its personnel policy for deviating from the CBA Step 2 pay rate, then AFSCME would have no further duty to Plaintiffs, however, as in this case, the City did not follow its personnel policy or the CBA. AFSCME had a duty to enforce the CBA pay scales and not allow the City of Albuquerque to arbitrarily assign pay for M14s under the CBA pay scales. AFSCME failed in its duty to Plaintiffs and its members by not filing a grievance.

CONCLUSION

WHEREFORE, Plaintiffs/Appellants respectfully requests this Court to reverse in full the decision of the District Court granting summary judgment to Appellee, and remand this matter back to the District Court for a trial on the merits.

Respectfully submitted,




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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing *Reply Brief* was mailed with a Copy of this Certificate of Service Via First-Class Mail, Postage Prepaid, Addressed to the Following on this 6th day of August, 2014:

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