

COPY

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,

COURT OF APPEALS OF NEW MEXICO  
ALBUQUERQUE  
FILED

OCT 22 2014

*Wandy E. Jones*

Plaintiffs-Appellants,

and

SAM BEATTY,

Plaintiff,

vs.

No. 33,714

Bernalillo County

D-202-CV-2012-3136

CITY OF ALBUQUERQUE,

Defendant-Appellee,

and

AMERICAN FEDERATION OF  
STATE, COUNTY AND  
MUNICIPAL EMPLOYEES 3022,

Defendant-Appellee.

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REPLY BRIEF

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

Submitted by:

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**ORAL ARGUMENT IS REQUESTED**

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**TABLE OF AUTHORITIES**

*Garcia v. Middle Rio Grande Conservancy Dist.*, 121 N.M. 728, 732, 918 P.2d 7,  
11 (1996) .....5, 6

## ARGUMENT

### A. DEFENDANT BREACHED ITS PERSONNEL POLICIES

The City argues that it did not breach its personnel policies because it has discretion to pay M14s at different pay rates. The City's personnel policies do have a process that allows the City to pay an M14 a higher salary; however, the City did not comply with that process. In *Garcia v. Middle Rio Grande Conservancy Dist.*, 121 N.M. 728, 732, 918 P.2d 7, 11 (1996), the New Mexico Supreme Court held that "a personnel manual gives rise to an implied contract if it controlled the employer-employee relationship and an employee could reasonably expect his employer to conform to the procedures it outlines."

In the City's Motion for summary judgment, the City attached §705.4 which states in part:

Any increases above the normal promotional process will require detail written justification, review and recommendation to the Human Resources Director and approval or denial by the Chief Administrative Officer.

[RP 83]. Based on the personnel policies of the City, the Plaintiff Beatty had a reasonable expectation that any new M14 would receive the same pay as he did unless the City explained and justified the reason for higher pay. The City admitted in its Motion for Summary Judgment that it paid at least one M14 one step higher than the personnel rules allowed for. [RP 74]. However, the City did not

demonstrate or produce any evidence that the City complied with the provision allowing for an exception to the normal promotional process. The City breached its promise to Plaintiff Beatty that it would follow its personnel policies when promoting new M14s. At the very least, there was a genuine issue of material fact regarding whether the City breached its personnel policies with regard to the setting of M14s pay.

#### B. PLAINTIFF HAS SUFFERED INJURY

Finally, the City argues that Plaintiff Beatty suffered no injury because the City paid other M14s a higher salary than Plaintiff. However, the City misses the point entirely. In *Garcia v. Middle Rio Grande Conservancy Dist.*, 121 N.M. 728, 732, 918 P.2d 7, 11 (1996), the New Mexico Supreme Court held:

Employers are certainly free to issue no personnel manual at all or to issue a personnel manual that clearly and conspicuously tells their employees that the manual is not part of the employment contract.... [However,] if an employer does choose to issue a policy statement, in a manual or otherwise, and, by its language or by the employer's actions, encourages reliance thereon, the employer cannot be free to only selectively abide by it. Having announced a policy, the employer may not treat it as illusory.


*Id.* Plaintiff Beatty was harmed in that the City was allowed to pick and choose how and when they apply the personnel policies. The City did not follow its policy with regard to setting the pay of Plaintiff's peers. Plaintiff Beatty has been harmed

because he accepted their pay rate believing that they had no other option, and expected the City to follow its personnel policies when promoting his peers. Had Plaintiff known that the City personnel policies did not have to be followed, he could have requested or negotiated more pay or refused to accept the pay he was given. Plaintiff Beatty accepted his pay based on the reasonable expectation that all employees promoted to M14 had to follow the City's personnel policies. Therefore, the District Court erred in determining there was no injury to Plaintiff. At the very least, there was a genuine issue of material fact regarding Plaintiff's expectation and the harm caused by the City's breach.

### **CONCLUSION**

**WHEREFORE**, Plaintiff/Appellant Beatty 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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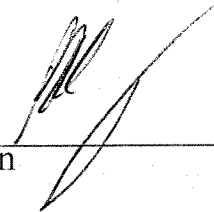
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**CERTIFICATE OF SERVICE**

**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 **22<sup>nd</sup>** day of October, 2014:

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