



OFFICE OF INSPECTOR GENERAL
City of Albuquerque

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DATE: February 4, 2022

SUBJECT: City not following union negotiation protocol before issuing
Administrative Instructions related to Covid 19 vaccination or testing

FILE NO: 22-0010-C

INVESTIGATOR: M. Santistevan 

STATUS: Closed

Informative Case Synopsis

Pursuant to City Ordinance 2-17-2, the Inspector General's goals are to: (1) Conduct investigations in an efficient, impartial, equitable and objective manner; (2) Prevent and detect fraud, waste and abuse in city activities including all city contracts and partnerships; (3) Deter criminal activity through independence in fact and appearance, investigation and interdiction; and (4) Propose ways to increase the city's legal, fiscal and ethical accountability to insure that tax payers' dollars are spent in a manner consistent with the highest standards of local governments.

On January 14, 2022, the Office of Inspector General "OIG" received an anonymous complaint alleging 'The city recently put out a mandate on vaccinations and testing for Covid. Now that the Supreme Court ruled on it they put a hold on this mandate. The problem that we have is that this was never negotiated to the unions nor did it follow the process as required for a change in a process like this.' Upon receiving this complaint, the OIG determined that the allegations did rise to the level of potential fraud, waste or abuse, initiated a case and began a fact-finding investigation.

OIG's fact-finding investigation consisted of the OIG Investigator reviewing the City of Albuquerque's Labor-Management Relations Ordinance (LMRO), reviewing AI 7-67, researching and reviewing EEOC guidance and regulations, researching and reviewing OSHA regulations, and interviewing Human Resource personnel to establish a timeline and process for the creation of AI 7-67.

While performing our fact-finding investigation, OIG discovered that OSHA issued temporary regulation 1910.501 that became effective January 10, 2022. At that date, OSHA's temporary regulation was being challenged at the U.S. Supreme Court and a ruling had not yet been made.

Federal EEOC laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, so long as employers comply with the reasonable accommodation provisions of the ADA and Title VII of the Civil Rights Act of 1964 and other EEO considerations.

The City's Labor Management-Relations Ordinance (LMRO) states: The city government and any employee organization recognized as the exclusive representative for a unit, through their designated agents, shall bargain concerning hours, salary, wages, working conditions and other terms and conditions of employment **not in violation of law** or local ordinance and not in conflict with the provisions of §§ 3-1-1 et seq., the Merit System establishing classified and unclassified service, and methods of initial employment, provided, however, that the provisions of a collective bargaining agreement which has been ratified and approved by the Mayor shall, where in conflict with any other provision of §§ 3-1-1 et seq. govern. This duty includes an obligation to confer in good faith with respect to terms and conditions of employment.

The City of Albuquerque created and promulgated AI-7-67 to ensure compliance with OSHA's regulation and implementation deadline of January 10, 2022. The City maintains that AI 7-67 was shared with the Union representatives at a round table discussion on January 6, 2022 in a good faith effort to comply with the Labor-Management Relations Ordinance. An interview with one of the Union Representatives in attendance at the round table discussion stated that some of the Unions expressed their concerns that AI 7-67 constituted a major change in working conditions and that those working conditions would require negotiations. The Union representatives did not feel that this roundtable discussion represented a good faith effort to negotiate, in part, because all union presidents were present and typical negotiations are done on a Union by Union basis and involve negotiating teams. Additionally, the Unions felt that the City could have initiated discussions and negotiations prior to January 6, 2022 because the OSHA mandate and its legal challenges had been well known and publicized in the media. Noting the disagreement, the City Administration made a change to AI 7-67 that was effective January 10, 2022 in response to the concerns voiced at the roundtable discussion. The Union representative interviewed stated that the City did not communicate this change until after a previous version of AI 7-67 had been released on January 7, 2022 and that this release prompted a bombardment of phone calls to the Union president. In January 2022, the Union representatives filed a complaint with the Labor Board because they felt that the City did not properly negotiate this Administrative Instruction. The City contends that the Administrative Instruction was made to comply with the mandatory OSHA regulation and that only the effects could be negotiated.

On January 13, 2022, the U.S. Supreme Court ruled that OSHA could not issue a regulation that would require mandatory vaccination or regular testing in such a wide sweeping manner. The U. S. Supreme Court remanded the matter to the lower courts.

The City issued a stay with regard to AI 7-67 on January 13, 2022 providing for additional time to consider the effects of the U.S. Supreme Court decision. On the same date, AI 7-58 and AI 7-64 were reinstated and extended through January 31, 2022. On January 20, 2022, the City of Albuquerque began discussions with the Union representatives to negotiate the effects of the Administrative Instructions to include the implications of both the reduction in PEM and PEV time off for Covid-19 related matters and employee non-compliance with the Administrative Instructions. OIG's interview with one of the Union representatives indicated that the City and Union has subsequently come to agreement on the effects on working conditions for these administrative instructions.

The OIG noted that outside the above-mentioned statement, the LMRO does not explicitly state a process for negotiating a federally mandated regulation. The OIG does acknowledge the fact that the pandemic exposed vulnerabilities in the previously agreed upon and promulgated LMRO but also acknowledges that these vulnerabilities create an opportunity for improvement to the Labor-Management Relations Ordinance. The City and Union representatives should consider revising the LMRO to ensure an agreed upon process when federal mandates are issued with limited time to respond.

The fact-finding investigation led to the discovery that the City of Albuquerque implemented AI-7-67 to be compliant with mandatory OSHA regulations for vaccinations and testing. The Supreme Court Ruling regarding the OSHA mandate resulted in the City issuing a stay on AI 7-67 on January 13, 2022 and subsequently, the Labor Board dismissed the Union's complaint.

Based on the information obtained during our fact-finding investigation, the allegations in the complaint have been negated by the stay of AI 7-67 and subsequent negotiations over the effects of the extended AI 7-58 and A 7-64, which are being re-negotiated and as such this case is being closed.