

SUPREME COURT OF NEW MEXICO

University of New Mexico Police Officer's Association v. The University of New Mexico and The University of New Mexico Police Department

138 N.M. 360 (N.M. 2005) · No. No. 28,559 · Decided August 16, 2005

SUMMARY

The Supreme Court of New Mexico held that governmental immunity under NMSA 1978, Section 37-1-23(A), did not bar enforcement of a written collective bargaining agreement between the University of New Mexico and its police officers' association. The court allowed oral representations to clarify an intentionally vague wage provision because the agreement was valid, executed, implemented, and relied upon, and the representations were consistent with rather than contradictory to the written contract.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of New Mexico                                                                                                                                                                                                                                                                                                                                         |
| WRITING FOR THE COURT | Bosson, Chief Justice; Serna, Justice; Maes, Justice; Chavez, Justice; Castillo, Judge, sitting by designation                                                                                                                                                                                                                                                      |
| JURISDICTION          | New Mexico                                                                                                                                                                                                                                                                                                                                                          |
| DECIDED               | August 16, 2005                                                                                                                                                                                                                                                                                                                                                     |
| DOCKET                | No. 28,559                                                                                                                                                                                                                                                                                                                                                          |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | The University petitioned for review of the Court of Appeals' affirmance of a district court judgment enforcing a collective bargaining agreement and awarding relief for the University's failure to implement an orally clarified wage term. The Supreme Court granted certiorari to determine whether governmental immunity barred enforcement of the agreement. |
| STANDARD OF REVIEW    | De novo review of the legal question concerning application of the governmental-immunity statute; the University did not challenge the trial court's factual findings.                                                                                                                                                                                              |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of New Mexico                                                                                                                                                                                                                                                                                                   |
|                       |                                                                                                                                                                                                                                                                                                                                                                     |

## PARTIES

The University of New Mexico, The University of New Mexico Police Department v. University of New Mexico Police Officer's Association

## TOPICS

government contracts

contract interpretation

employment contracts

parol evidence rule

municipal law

## PRACTICE AREAS

government contracts

contracts

employment law

statutory interpretation

municipal law

## QUESTIONS PRESENTED

1. Whether NMSA 1978, Section 37-1-23(A), which waives governmental immunity only for actions based on a valid written contract, barred enforcement of a written collective bargaining agreement whose ambiguous wage term was clarified through oral representations.
2. Whether the use of extrinsic oral representations to interpret the wage provision transformed the action into one based on an invalid oral government contract or otherwise defeated the statutory written-contract exception to governmental immunity.

## HOLDINGS

1. Section 37-1-23(A) did not bar the Association's action because the parties had a valid written collective bargaining agreement, and under the specific circumstances of this case the court could consider oral representations to clarify the agreement's ambiguous wage term.
2. The decision did not authorize resort to parol evidence to resolve every ambiguity in every government contract; its holding was confined to the particular circumstances involving a valid, implemented government employment contract that expressly anticipated a later compensation study and whose wage term was clarified by reliable, noncontradictory representations.

## KEY QUOTATIONS

*"We share the same concerns expressed below by Chief Judge Bustamante and Judge Sutin of the Court of Appeals that we not open the doors to parol evidence in all circumstances, for all ambiguities, in any kind of government contract, to the same degree as contracts between private parties."* (120 P.3d at 446)

*"Under these circumstances, therefore, we conclude that both the district court and the Court of Appeals were correct in looking to oral representations to clarify the existing written contract."* (120 P.3d at 447)

*"We affirm the Court of Appeal's holding that Section 37-1-23(A) is not a bar to enforcement of the collective bargaining agreement including the portions proven by oral representations."* (120 P.3d at 447)

## FACTUAL BACKGROUND

The University of New Mexico and its police officers' association negotiated a collective bargaining agreement while the University was developing the UNMPact compensation study. A University official represented that campus-police wages would be based on the average starting wages of the Albuquerque Police Department and

the Bernalillo County Sheriff's Department, and the Association relied on those representations in accepting the agreement. The written agreement referred to and required implementation of the unfinished UNMPact study but did not expressly specify the wage formula; after the study was completed, the University used a broader comparison market and paid wages approximately two dollars per hour lower than represented.

## PROCEDURAL HISTORY

The district court held a bench trial, found that a University official made representations limiting the wage-comparison market to the Albuquerque Police Department and Bernalillo County Sheriff's Department, and found that the Association relied on those representations in ratifying the agreement. The Court of Appeals affirmed in three separate opinions. The Supreme Court granted certiorari and affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Campos de Suenos, Ltd. v. County of Bernalillo, 2001-NMCA-043, 130 N.M. 563, 28 P.3d 1104
- Hicks v. State, 88 N.M. 588, 544 P.2d 1153 (1975)
- Electro-Jet Tool Mfg. Co. v. City of Albuquerque, 114 N.M. 676, 845 P.2d 770 (1992)
- Hydro Conduit Corp. v. Kemble, 110 N.M. 173, 793 P.2d 855 (1990)
- Trujillo v. Gonzales, 106 N.M. 620, 747 P.2d 915 (1987)
- Garcia v. Middle Rio Grande Conservancy District, 1996-NMSC-029, 121 N.M. 728, 918 P.2d 7
- Handmaker v. Henney, 1999-NMSC-043, 128 N.M. 328, 992 P.2d 879
- Rhodes v. Wilkins, 83 N.M. 782, 498 P.2d 311 (1972)
- Kestenbaum v. Pennzoil Co., 108 N.M. 20, 766 P.2d 280 (1988)
- Mark V, Inc. v. Mellekas, 114 N.M. 778, 845 P.2d 1232 (1993)
- C.R. Anthony Co. v. Loretto Mall Partners, 112 N.M. 504, 817 P.2d 238 (1991)
- University of New Mexico Police Officer's Association v. University of New Mexico, 2004-NMCA-050, 135 N.M. 655, 92 P.3d 667