

<b>ANDERSON V. CITY OF RIO RANCHO</b>
---------------------------------------

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

**BRIAN ANDERSON, STEVE ANGLIN,  
NICK ARMY, JASON BOWIE, AARON  
BROWN, GREG BUHL, CHRIS COMACHO,  
MONICA CASAUS, DONNA CHAVEZ,  
JEFF CHAVEZ, TRAVIS CHAVEZ,  
TAMARA COFFEE, DAVID COLEMAN,  
ROBERT CORDOVA, APRIL DAVIS,  
EMERY DAY, JOHN DICKERSON,  
KEVIN DUPRE, LANA ELDER, GREG  
FAIRHURST, VERNON FORD, MELANIE  
FOSTER, CHRIS FRENCH, LORETTA  
FRENCH, AMY GALLEGOS, GASPAR  
GARCIA, MICHELLE GARCIA, RICHARD  
GARCIA, YVONNE GARCIA, DAVID  
GENTRY, DAVID GENTRY, JR., STEVE  
GILL, SHAWN GINN, DAISY GOMEZ,  
DAVID GOMEZ, MARK GONZALES,  
SALVADOR GONZALES, LISA GOWEN,  
BRENDA GUTIERREZ, JAMES HARRIS,  
DAVID HUBBARD, BRIAN INGLES,  
KELLEY JACOBUS, GALE JOHNSON,  
LISA KEHOE (AVELING), DAVID KENT,  
JOHNATHAN KNOELL, NORMAN KNOX,  
RICHARD KOSCHADE, JAMES LAPORTE,  
JEFF LEPORI, AUBRAI LUCERO, ELI  
LUCERO, JOLENE MADRID-LONGHI,  
CHRISTOPHER MAESTAS, LEROY  
MALDONADO, MARK MANNO, HANNAH  
MARES, YOLANDA MARSHALL, KC MARTIN,  
KAREN MARTINEZ, RICHARD MARTINEZ,  
DONOVAN MASCARENAS, RICHARD MCCOOL,  
JEFF MCNEIL, RODNEY MONTOYA, KAREN  
(MORANT) GILL, JARED MOSHER, MICHAEL  
NAUS, VIRGINIA PEABODY, MICHAEL  
PELLIGRINI, MATT PHELPS, STACI PORCH,  
TERRY POWERS, JUSTIN RANKIN, BRIAN REES,  
CHARLES RITTER, CODY ROBERTS, TIM ROBEY,**

**PAUL ROGERS, RICHARD ROMERO, ROBERT ROSALES, JOHN ROSKOS, JOHN ROSS, MELINDA ROSSI, RICK SALGADO, BEN SANCHEZ, LYNN SANTISTEVAN, CHRIS SCHEAR, AMBER SCHIELDGE, JOSH SEDA, ROBERT SERRANO, ANGELA SIMMONS, ANTOINE SMITH, AMANDA SOTO/ROGAHN, RAY SOTO, GARY TAFOYA, BRIAN THACKER, DEBORAH THOMPSON, VINCENT VALDEZ, KEVIN VALENCIA, TASHINA VELARDE-SMOYER, ALFRED WALDREP, ZANE WARD, JENNIFER WATTS, CHARLES WEAVER, DONNA WEAVER, KEN WILLEY, STACY WISEMAN, DANNY YOUNG, and REYDES ZAMARRON,  
Plaintiffs-Appellants,  
v.  
CITY OF RIO RANCHO,  
Defendant-Appellee.**

No. A-1-CA-36349

COURT OF APPEALS OF NEW MEXICO

December 26, 2017

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY, James Lawrence Sanchez, District Judge

**COUNSEL**

JoHanna C. Cox, Albuquerque, NM, for Appellants

Office of the City Attorney, Gregory F. Lauer, Kenneth J. Tager, Rio Rancho, NM, for Appellee

**JUDGES**

JONATHAN B. SUTIN, Judge. WE CONCUR: LINDA M. VANZI, Chief Judge, JULIE J. VARGAS, Judge

**AUTHOR:** JONATHAN B. SUTIN

**MEMORANDUM OPINION**

**SUTIN, Judge.**

**{1}** Plaintiffs Brian Anderson, et al. appeal the order of the district court granting summary judgment to Defendant City of Rio Rancho. In response to Plaintiffs' docketing statement, we issued a notice of proposed summary disposition, proposing to affirm. Plaintiffs have filed a memorandum in opposition. After due consideration, we remain unpersuaded and therefore affirm.

**{2}** To the extent possible, we will avoid repetition here of pertinent background and analytical principles set forth in our calendar notice. Instead, we will focus on Plaintiffs' memorandum in opposition. In their memorandum, Plaintiffs raise arguments that the arbitrator exceeded his authority in deciding the issue of damages. [See, e.g., MIO 7 ("The arbitrator was not allowed to fully resolve the conflict and was . . . limited to mak[ing] a finding of a breach.")] We pass no judgment on the merits of these arguments. As we stated in our calendar notice, this lawsuit is not a challenge to or appeal of the arbitration award; rather, it is an attempt to relitigate the already-arbitrated dispute related to a breach of the collective bargaining agreement (CBA), this time in district court under a breach of contract theory. [See RP 1-6 (complaint for breach of express promise, breach of implied promise, and common law breach of contract) (articulating various claims related to breach of contract arising out of unpaid raises, without challenging or mentioning the completed arbitration arising out of the same dispute); 1 RP 167-71 (first amended complaint for breach of express promise, breach of implied promise, and common law breach of contract) (same)] The arbitration addressed the issues related to this lawsuit. [See 2 RP 318-19 Arbitration Award ("The first issue presented herein is whether the City has violated the CBA by failing to appropriate and pay unto the 'First Responder' personnel, herein represented by the Union, the annual compensation increase, as specified by the CBA, for the fiscal year ended June 30, 2010? If so, then the remaining question to be resolved is the nature and scope of the appropriate remedy[.]"); 2 RP 325-26 (stating that the arbitration position of the Union was that it was due at least \$442,669 in damages as a result of the breach of the CBA)] The arbitrator found that he was without authority to order Defendant to appropriate funds to make Plaintiffs "monetarily whole for their loss of the guaranteed" raise. [2 RP 332 (internal quotation marks omitted)] If Plaintiffs contend that the arbitration decision was improper as to damages because the arbitrator exceeded his authority, they had to, or must, challenge or appeal the award of the arbitrator. [See 2 RP 273 (CBA, Art. 13A(D)(12)) ("The parties recognize this dispute resolution procedure is the only procedure available to employees covered by this agreement and is the exclusive remedy for the settlement of disputes pertaining to employment terms[.]"); RP 271 (CBA, Art. 13A(C)(2)) ("The arbitrator's decision shall be final and binding on the parties.")] See *United Tech. & Res., Inc. v. Dar Al Islam*, 1993-NMSC-005, ¶ 23, 115 N.M. 1, 846 P.2d 307 ("Having bitten once at the arbitration apple, [a party] cannot [then] take a second bite from the judicial one.").

**{3}** Plaintiffs also contend that two of the cases cited in our notice of proposed disposition are inapposite. [MIO 5-6] Neither case was cited as controlling; both are cited for relatively narrow propositions. Plaintiffs' efforts to distinguish those cases factually do not dissuade us from our proposed conclusion.

**{4}** Accordingly, for the reasons stated in our notice of proposed summary disposition and in this opinion, and applying, as we must, de novo review to this issue of law, *Bank of N.Y. Mellon v. Lopes*, 2014-NMCA-097, ¶ 6, 336 P.3d 443, we affirm the order of the district court granting summary judgment to Defendant.

**{5} IT IS SO ORDERED.**

**JONATHAN B. SUTIN, Judge**

**WE CONCUR:**

**LINDA M. VANZI, Chief Judge**

**JULIE J. VARGAS, Judge**