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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **MARIO ALDERETE, DONALD**
3 **MEDINA, JESSE SERNA, GEORGE**
4 **ALLEN WYLER, JERONIMO**
5 **RIVERA, GILBERT KOZLOWSKI,**
6 **RICHARD BARROS, JOSEPH**
7 **TAFOYA, ANGELO GALLEGOS,**
8 **MIKE FARIAS,**

9 Plaintiffs-Appellants,

10 and

Nos. 33,151; 33,380;
33,714 (consolidated)

11
12 **SAM BEATTY,**

13 Plaintiff-Appellant,

14 v.

15 **CITY OF ALBUQUERQUE,**

16 Defendant-Appellee,

17 and

18 **AMERICAN FEDERATION OF**
19 **STATE, COUNTY, AND**
20 **MUNICIPAL EMPLOYEES 3022,**

21 Defendant-Appellee.

1 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

2 **Beatrice Brickhouse, District Judge**

3 The Gilpin Law Firm, LLC

4 Donald Gilpin

5 Albuquerque, NM

6 for Appellants

7 David Tourek, City Attorney

8 Rebecca E. Wardlaw, Assistant City Attorney

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14 for Appellee City of Albuquerque

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17 Stephen Curtice

18 James A. Montalbano

19 for Appellee AFSCME

20 **MEMORANDUM OPINION**

21 **VIGIL, Judge.**

22 {1} Plaintiffs are City of Albuquerque (the City) Solid Waste Management

23 Department (SWMD) employees who filed a breach of contract claim against the City,

24 and a breach of duty of fair representation against their union, the American

25 Federation of State, County and Municipal Employees, Local 3022 (AFSCME). The

1 district court granted summary judgment to the City and AFSCME, and Plaintiffs
2 appeal. We affirm.

3 **BACKGROUND**

4 {2} This is a memorandum opinion; as such, we only recite the facts as necessary
5 for resolution of the issues. Plaintiffs all occupy M-series, grade 14 (M14), step 2
6 positions under the City’s Personnel Rules and Regulations (PRRs). Plaintiffs contend
7 that the City violated the PRRs and the collective bargaining agreement (CBA) with
8 AFSCME by not placing all M14 level employees in the same step classification, and
9 that AFSCME wrongly refused to file a grievance to inquire why all M14 employees
10 do not occupy the same step classification. Plaintiff Samuel Beatty also alleges that
11 the City violated its agreement to maintain his pay and step 3 classification upon his
12 transfer into the SWMD.

13 {3} In three separate orders, resulting in three appeals, which we have consolidated,
14 the district court granted summary judgment in favor of the City and AFSCME on
15 these claims.

16 **DISCUSSION**

17 {4} “An appeal from the grant of a motion for summary judgment presents a
18 question of law and is reviewed de novo.” *Montgomery v. Lomos Altos, Inc.*, 2007-
19 NMSC-002, ¶ 16, 141 N.M. 21, 150 P.3d 971. We review the whole record to

1 determine whether any evidence puts a material fact in issue. *Pharmaseal Labs., Inc.*
2 *v. Goffe*, 1977-NMSC-071, ¶ 18, 90 N.M. 753, 568 P.2d 589. Having read the record,
3 the parties’ briefs, and held oral argument, we agree with the district court’s grant of
4 summary judgment. Briefly we address our holding to affirm.

5 **No Breach of Implied Employment Contract**

6 {5} To prevail on a breach of contract claim, Plaintiffs are required to prove a valid
7 contract, breach of the contract, and damages. *See Constr. Contracting & Mgmt., Inc.*
8 *v. McConnell*, 1991-NMSC-066, ¶ 10, 112 N.M. 371, 815 P.2d 1161. It is undisputed
9 that Plaintiffs and the City have an implied employment contract through the PRRs.
10 *See Newberry v. Allied Stores, Inc.*, 1989-NMSC-024, ¶ 7, 108 N.M. 424, 773 P.2d
11 1231 (“Under New Mexico law, a personnel manual gives rise to an implied contract
12 if it controlled the employer-employee relationship and an employee could reasonably
13 expect his employer to conform to the procedures it outlined.”). However, it is also
14 an undisputed fact that the City has properly classified and pays each Plaintiff in
15 accordance with the PRRs. Two essential elements of Plaintiffs’ breach of contract
16 claim are therefore absent, breach of the contract and damages. Nevertheless,
17 Plaintiffs contend that because another City employee identified as Juan Jojola, who
18 is not a plaintiff, allegedly was classified as a M14, step 3 employee contrary to
19 certain written procedural requirements of the PRRs, Plaintiffs are entitled to pursue

1 a breach of contract claim. The Court is not aware of any authority to support
2 Plaintiffs' contention. Plaintiffs do not present any authority supporting this argument,
3 and we do not consider propositions that are unsupported by citation to authority. *ITT*
4 *Educ. Servs., Inc. v. Taxation & Revenue Dep't*, 1998-NMCA-078, ¶ 10, 125 N.M.
5 244, 959 P.2d 969; *see also In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M.
6 764, 676 P.2d 1329 (stating that where a party cites no authority to support an
7 argument, we may assume no such authority exists). Summary judgment was properly
8 granted on the breach of contract claim.

9 **No Breach of Beatty's Transfer Agreement**

10 {6} The City agreed to transfer Plaintiff Beatty to the SWMD M14 position and
11 maintain his pay and "step 3" classification. Beatty argues that the City breached its
12 contract by subsequently reclassifying him to "step 2" and by reducing his pay. Due
13 to subsequent collective bargaining agreements in accordance with the law after
14 Beatty's transfer, he was properly reclassified as a "step 2," but maintained his same
15 "step 3" pay rate. In 2010, pursuant to another collective bargaining agreement, all of
16 the City's employees had their pay reduced, including Beatty. The undisputed facts
17 establish that the City continued to maintain Beatty's proper level of "step 3" pay after
18 his transfer, and that the change in Beatty's classification and pay rate was in

1 accordance with the CBA and independent of his transfer. Summary judgment was
2 proper on this claim as well.

3 **No Breach of AFSCME’s Duty of Fair Representation**

4 {7} The City’s breach of its CBA with AFSCME is essential to Plaintiffs’ claim that
5 AFSCME breached its duty of fair representation. *Akins v. United Steelworkers of*
6 *Am.*, 2010-NMSC-031, ¶ 11, 148 N.M. 442, 237 P.3d 744 (setting forth elements of
7 a duty of fair representation claim). However, Plaintiffs failed to present material
8 issues of fact that they are not paid in accordance with the PRRs or the CBA, and
9 summary judgment was properly granted in favor of AFSCME.

10 **CONCLUSION**

11 {8} The orders of the district court granting summary judgment in favor of the City
12 and AFSCME are affirmed.

13 {9} **IT IS SO ORDERED.**

14

15

MICHAEL E. VIGIL, Chief Judge

16 **I CONCUR:**

17

18 _____
TIMOTHY L. GARCIA, Judge

19 **LINDA M. VANZI, Judge (specially concurring).**

1 **VANZI, Judge (specially concurring).**

2 {10} I concur in the result. I write separately because I believe the parties are entitled
3 to a more detailed explanation as to the reasons for our affirmance.

4
5

LINDA M. VANZI, Judge