

SECOND JUDICIAL DISTRICT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

SG

LEOPOLDO PINEDA,
Plaintiff,

D-202-CV-2011-11975

vs.

SOCORRO ELECTRIC COOPERATIVE, INC.,
PAUL BUSTAMANTE, and CHARLES WAGNER,

Defendants.

**VERIFIED COMPLAINT FOR BREACH OF CONTRACT,
VIOLATIONS OF THE NEW MEXICO HUMAN RIGHTS ACT,
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR
DEALING AND INTENTIONAL INTERFERENCE WITH
CONTRACTUAL RELATIONS**

COMES NOW Leopoldo Pineda, Plaintiff [Mr. Pineda], by and through his attorney of record, J. Edward Hollington, J. Edward Hollington & Associates, and for his Verified Complaint against the Defendants, Socorro Electric Cooperative [SEC], Paul Bustamante and Charles Wagner, states:

I. JURISDICTION AND VENUE

1. Leopoldo Pineda [Mr. Pineda] is a resident of Albuquerque, Bernalillo County, New Mexico.
2. Defendant, Socorro Electric Cooperative, Inc. [SEC], is a New Mexico rural electric cooperative licensed by the New Mexico Public Regulation Commission [PRC] as license number 0048.
3. Mr. Pineda was employed as the General Manager with SEC from June 26, 2003 until August 25, 2010.
4. Defendant, Paul Bustamante, is a resident of Socorro County, New Mexico.

5. Defendant, Charles Wagner, is a resident of Socorro County, New Mexico.
6. Mr. Pineda had a written employment contract with SEC.
7. This Court has jurisdiction over the parties, subject matter and venue is properly before this Court.

II. STATEMENT OF FACTS

8. Mr. Pineda was employed as the General Manager of SEC pursuant to a written employment agreement dated November 25, 2003. A copy of the employment agreement is attached as Exhibit 1. The term of the employment agreement [Exhibit 1] was extended through December 31, 2009, pursuant to an extension agreement dated November 19, 2007. A copy of the extension agreement is attached as Exhibit 2.

9. A second extension agreement extending Mr. Pineda's term as General Manager to December 31, 2011 was signed by Mr. Pineda and Defendant, Paul Bustamante, on February 25, 2009. A copy of the second extension is attached as Exhibit 3.

10. The business and affairs of SEC are managed by a Board of Trustees pursuant to NMSA 1978 §62-15-9. The Board of Trustees is required to carry out its duties and responsibilities pursuant to New Mexico law, NMSA 1978 §62-15-1 et. seq. [Rural Electric Cooperative Act] and SEC's articles of incorporation and its by-laws.

11. Defendant, Paul Bustamante, is the President of the Board of Trustees of SEC and was President during all material times of this action.

12. Defendant, Charles Wagner, is a member of the Board of Trustees of SEC first elected in January 2006 and continues to serve as a member of the Board Trustees.

13. SEC's Board Policies 101, 103, and 201 provide that the Board of Trustees employ a manager [General Manager] to manage the daily affairs of SEC.

14. In April of 2010, SEC members amended the SEC by-laws pursuant to §62-15-7. The amended by-laws included requirements that the Board of Trustees conduct its meetings and affairs in compliance with the New Mexico Open Meetings Act [OMA] and the New Mexico Inspection of Public Records Act [IPRA].

15. Mr. Pineda received favorable and positive written performance evaluations from the Board of Trustees while he was employed as General Manager.

16. During the term of the employment contract [Exhibits 1-3], Mr. Pineda's employment could only be terminated for cause as specifically defined in paragraph 6 of the employment agreement. [See Exhibit 1.]

17. On August 13, 2010, Mr. Pineda received written notice that he was being placed on indefinite unpaid administrative. The written notice Mr. Pineda received contained no reasons, explanations or causes for the unpaid administrative leave.

18. On August 25, 2010, a letter of termination signed by Defendant, Paul Bustamante, informed Mr. Pineda that his employment was terminated effective August 25, 2010. The notice of termination contained no causes, reasons or explanation for the termination.

19. Mr. Pineda had not received any prior warnings, notices, or any prior disciplinary action that indicated his job was in jeopardy.

20. The notice of termination had no reference to any conduct identified as cause in the employment contract [Exhibit 1] at paragraph 6.

21. During a December 18, 2009 Board of Trustees' meeting, Defendant Wagner made false and accusatory statements about Kathy Torres, the SEC accountant and office manager. He stated that Ms. Torres was only allowed to attend Board meetings so that Mr. Pineda could "hide behind her [Ms. Torres'] skirts." Mr. Pineda is Hispanic, as is Ms. Torres.

22. Over the months following the December 18, 2009 meeting, Defendant Wagner continued making false, derogatory, discriminatory and racist comments against Hispanic employees and referred to Hispanics as "chihuahuas" and complained that Ms. Torres and other Hispanics should "speak clear English".

23. On several occasions, Mr. Pineda expressed concerns and objections about Board member, Defendant, Wagner's discriminatory conduct toward Ms. Torres and other Hispanic employees of SEC.

24. During a Board of Trustees meeting in June of 2010, Defendant Wagner, knowing of Mr. Pineda's objections to his racist and discriminatory comments, stated during the Board meeting that Mr. Pineda was "working to support, instigate and cooperate with Ms. Torres' filing charges of discrimination."

25. On October 7, 2010, Mr. Pineda filed a charge of discrimination with the Equal Employment Opportunity Commission [EEOC] and the New Mexico Human Rights Department [HRD] as charge number 543-2011-00040 based on retaliation. On September 13, 2011, HRD issued an Order of Non-Determination to Mr. Pineda for charge number 543-2011-00040.

26. On February 10, 2011, Mr. Pineda filed a charge of discrimination based on age and retaliation with the EEOC and HRD as charge number 543-2011-0564. HRD issued an Order of Non-Determination for charge 543-2011-0564 on September 13, 2011.

27. Mr. Pineda has complied with the administrative requirements of the New Mexico Human Rights Act for bringing claims for violations of that Act in this lawsuit.

28. Mr. Pineda has incurred attorney fees and costs in bringing these claims.

29. Mr. Pineda is a member of SEC and he made demands and engaged in efforts to obtain relief and actions from the Board of Trustees prior to filing this action as specified at NMSA 1978 §62-15-9[H].

COUNT I. VIOLATIONS OF THE NEW MEXICO
HUMAN RIGHTS ACT [HRA]- AGE

30. Plaintiff incorporates the allegations contained in paragraphs 1 through 29 of this Complaint as fully set forth herein.

31. At the time of termination of Mr. Pineda's employment, he was 56 years old.

32. Mr. Pineda was qualified for the position of General Manager with SEC.

33. Mr. Pineda was terminated on August 25, 2010 without any explanation, cause or reason provided in the notice of termination.

34. Mr. Pineda's age was a motivating factor in SEC's termination of his employment.

35. SEC replaced Mr. Pineda with a permanent General Manager who is younger [under the age of 40].

36. Defendants' discriminatory conduct has caused Mr. Pineda actual damages.

Wherefore, Plaintiff respectfully requests the Court enter judgment in his favor and against the Defendants, award him actual damages, including but not limited to loss of income and benefits [back-pay and front-pay], damages for emotional distress, humiliation, attorney fees and costs, pre-judgment and post-judgment interest and such other equitable relief as the Court deems just and appropriate, including but not limited to reinstatement as the General Manager

with payment of compensation and benefits from August 25, 2010 through current and order that there has been no break in service and such other and further equitable relief as the Court deems just and appropriate.

COUNT II. VIOLATIONS OF THE NEW MEXICO
HUMAN RIGHTS ACT [HRA]- RETALIATION

37. Plaintiff incorporates the allegations contained in paragraphs 1 through 36 of this Complaint as fully set forth herein.

38. Mr. Pineda's opposition to the discriminatory statements and conduct of Defendant Wagner was protected activity pursuant to NMSA 1978 §28-1-7[I] [2] [2004].

39. Mr. Pineda's opposition to discriminatory conduct was a motivating factor in SEC's decision to terminate his employment.

40. SEC also terminated the employment of the office manager/accountant Kathy Torres, who had filed a charge of discrimination against SEC and Defendant Wagner on July 7, 2010.

41. Defendants' retaliatory conduct has caused Mr. Pineda actual damages.

Wherefore, Plaintiff respectfully requests the Court enter judgment in his favor and against the Defendants, award him actual damages, including but not limited to loss of income and benefits [back-pay and front-pay], damages for emotional distress, humiliation, attorney fees and costs, pre-judgment and post-judgment interest and such equitable relief as the Court deems just and appropriate including but not limited to reinstatement as the General Manager with payment of compensation and benefits from August 25, 2010 through current and order that there has been no break in service and such other and further equitable relief as the Court deems just and appropriate.

COUNT III. BREACH OF CONTRACT

42. Plaintiff incorporates the allegations contained in paragraphs 1 through 41 of this Complaint as fully set forth herein.

43. The employment agreement and extension agreements [Exhibits 1-3] are enforceable contracts.

44. Defendant SEC terminated Mr. Pineda employment without cause as defined in paragraph 6 of the employment agreement [Exhibit 1].

45. Defendant SEC breached the contracts when it terminated Mr. Pineda's employment without cause as defined in paragraph 6 of the contract.

46. Defendant SEC's actions in placing Mr. Pineda on administrative on August 13, 2010, and terminating his employment on August 25, 2010 violated the New Mexico Open Meetings Act [OMA] which was incorporated into SEC's amended bylaws in April of 2010.

47. Defendant SEC's failure to comply with the requirements of the OMA in its actions against Mr. Pineda on August 13, 2010 and August 25, 2010 results in those actions being invalid and not effective.

48. In the case *Socorro Electric Cooperative, Inc. vs. Charlene West and Charles Wagner, Cross-Plaintiff, vs. Socorro Electric Cooperative*, filed in the *Seventh Judicial District Case No. D-1314-CV-2010-0849*, before the Honorable Albert J. Mitchell, Jr., District Court Judge, an Order on a Hearing on Partial Merits was entered on June 24, 2011. In that order, the Court found that SEC lawfully enacted bylaws at an annual meeting on April 17, 2010 which amendments included a requirement that the Board of Trustees comply with the OMA and the Inspection of Public Records Act [IPRA]. The Court ordered that the amendments to the bylaws

requiring compliance with the OMA and the IPRA were lawful and binding upon SEC, its Board of Trustees, and its members and that the amended bylaw has been binding on SEC since the election results were certified.

49. On November 8, 2011, Judge Mitchell entered another order in *Case No. D-1314-CV-2010-0849* which included the following, "That Socorro Electric Cooperative, Inc., by the legitimate act of its members, has chosen to voluntarily be subject to the Open Meetings Act [Sec. 10-15-1 et seq., NMSA 2003] and the state Inspection of Public Records [Sec. 14-3-1 et seq., NMSA 2003].

50. On June 7, 2011, Mr. Pineda made written demand on SEC for payment of his salary and benefits owed to him since August 25, 2010. SEC did not respond to Mr. Pineda's demand. Failure to pay to Mr. Pineda his salary and benefits pursuant to his contract constitutes additional violations of his contract [Exhibits 1-3].

51. Defendant SEC's breaches of the employment contract have caused damages to Mr. Pineda, including but not limited to, loss of income and benefits for the remaining term of the contract plus probable extensions.

52. Defendants' conduct in terminating Mr. Pineda's employment and not paying his salary and benefits since August 25, 2010, constitutes willful, wanton, malicious and careless disregard of Plaintiff's contractual rights.

Wherefore, Plaintiff respectfully requests the Court enter judgment in his favor and against the Defendant SEC and award him damages including loss of income and benefits, punitive damages, pre-judgment and post-judgment interest, attorney fees, costs, and such other and further relief as the Court deems just and appropriate.

COUNT IV. BREACH OF THE COVENANT
OF GOOD FAITH AND FAIR DEALING

53. Plaintiff incorporates the allegations contained in paragraphs 1 through 52 of this Complaint as fully set forth herein.

54. Defendant SEC had a duty of good faith and fair dealing in its performance of the contract [Exhibits 1-3].

55. Defendant SEC intentionally deprived Mr. Pineda of the benefits of his employment contract by wrongfully and intentionally terminating his employment on August 25, 2010.

56. Defendant SEC acted in bad faith in terminating Mr. Pineda's employment without cause as defined by paragraph 6 of the employment contract [Exhibit 1] and by not complying with the OMA.

57. Defendant SEC intended to cause harm to Mr. Pineda when it intentionally terminated his employment in violation of the contract.

Wherefore, Plaintiff respectfully requests the Court enter judgment in his favor and against the Defendant SEC and award him damages including loss of income and benefits, punitive damages, pre-judgment and post-judgment interest, costs, and such other and further relief as the Court deems just and appropriate.

COUNT V. DEFAMATION

58. Plaintiff incorporates the allegations contained in paragraphs 1 through 57 of this Complaint as fully set forth herein.

59. Defendants published to others an anonymous letter on or about July 30, 2010 that contained false statements and accusations intended to expose Mr. Pineda to contempt, harm his reputation and discourage others from associating or dealing with him.

60. Defendants also published statements to others, including the local media, alleging that Mr. Pineda had engaged in fraud, committed criminal acts and financial irregularities. Those statements were false.

61. One or more of the statements published by the Defendants about Mr. Pineda were false and intended to expose Mr. Pineda to contempt, harm his reputation and discourage others from associating or dealing with him.

62. The Defendants' publications of defamatory statements about Mr. Pineda have caused him humiliation and mental anguish.

63. The Defendants conduct against Mr. Pineda was willful, wanton, malicious and done in reckless disregard of Mr. Pineda's rights.

Wherefore, Plaintiff respectfully requests the Court enter judgment in his favor and against the Defendants, award him compensatory damages including but not limited to damages for humiliation, mental anguish and such other and further compensable damage as may be proven at trial, punitive damages, costs, pre-judgment, post-judgment interest, and such other and further equitable relief as the Court deems just and appropriate, including publication of an apology and admission that Mr. Pineda did not commit fraud, financial irregularities, and did not engage in criminal conduct while employed at SEC.

COUNT VI. INTENTIONAL INTERFERENCE
WITH CONTRACTUAL RELATIONS

64. Plaintiff incorporates the allegations contained in paragraphs 1 through 63 of this Complaint as fully set forth herein.

65. Defendants Paul Bustamante and Charles Wagner had knowledge of Mr. Pineda's employment contract with SEC.

66. Defendants Bustamante and Wagner made statements and took action with the intent of causing the termination of Mr. Pineda's employment contract. The Defendants', Bustamante and Wagner's conduct constituted wrongful interference, and was done with the intent of causing harm and damage to Mr. Pineda.

67. The Defendants' actions against Mr. Pineda were done without justification and/or privilege.

68. As the proximate result of the Defendants' wrongful interference with Mr. Pineda's contractual agreements with SEC, Mr. Pineda has lost income and benefits, including back-pay and front-pay, and other compensable damages to be proven at trial.

69. Defendants', Bustamante and Wagner's conduct was willful, malicious, wanton and done in careless disregard of Mr. Pineda's rights.

Wherefore, Plaintiff respectfully requests the Court enter judgment in his favor and against the Defendants, Bustamante and Wagner, jointly and severally, and award Plaintiff compensatory damages including, loss of income and benefits [back-pay and front-pay], punitive damages, costs, pre-judgment, post-judgment interest, and such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

J. EDWARD HOLLINGTON & ASSOCIATES, P.A.

/s/ J. Edward Hollington

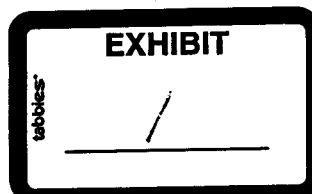
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EMPLOYMENT AGREEMENT

THIS AGREEMENT made between Leopoldo Pineda, Jr. of Socorro, Socorro County, New Mexico, herein referred to as "General Manager" and Socorro Electric Cooperative, Inc., a New Mexico Corporation, hereinafter Called "Employer."


In consideration of the mutual covenants and promises which the parties set forth below, General Manager and Employer agree as follows:

1. Employer hereby employs General Manager and General Manager hereby enters into the employment of the Employer, headquartered in Socorro, Socorro County, New Mexico, and known as Socorro Electric Cooperative, Inc.
2. Compensation. In consideration of the services of General Manager, Employer agrees to pay General Manager and General Manager shall accept a gross annual salary of \$75,000.00 per year (less standard payroll deductions) beginning January 1, 2004 and ending December 31, 2006. A seven percent increase will be added to salary each year.
3. Duties. General Manager agrees that he will at all times faithfully, industriously, and to the best of his ability, experience and talents, perform all of the duties that may be required of and from him pursuant to the express and implicit terms hereof to the reasonable satisfaction of employer.
4. Best Efforts. General Manager shall devote his whole time, energy and attention to the performance of his duties, subject at all times to the direction and control of the Board of Trustees of Employer and General Manager shall promptly obey and comply with all rules, regulations, policies and orders that may, from time to time, be issued by the Board of Trustees of Employer.
5. Other Employment. General Manager shall not directly or indirectly represent, or be in the employ of any other person, firm or corporation or be engaged or interested in any other business or enterprise whatsoever while in the employ of the Employer.
6. Discharge for Cause. Employer may discharge General Manager for incompetence, intoxication, drug addiction, insubordination and any violation of any rule or regulation, Board order or policy that may be established from time to time for the conduct of the Employer's business, or for any failure of General Manager to perform any agreement, duty or obligation of General Manager under this Agreement.
7. Term. This Agreement shall be in effect for a period 3 years beginning January 1, 2004. A new Employment Agreement between General Manager and Employer must be entered into on or before December 31, 2006.



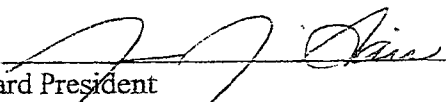
8. Termination on Death of General Manager. This Agreement shall terminate immediately on the death of General Manager and on the happening of that event; Employer shall be liable for no payment of salary accruing thereafter.
9. Vacation. Allowance and Sick Leave. General Manager's vacation, allowance and sick leave shall be determined by policy of the Board of Trustees now in effect, or as modified hereafter by the Board of Trustees.
10. This Agreement may be subject to the approval of the Rural Utility Services of the United States Department of Agriculture. Employer and General Manager shall mutually seek such approval.
11. This Agreement contains the entire contract between the parties and any representation that may have heretofore been made by either party to the other is void. Neither party has relied on such representation in entering into this Agreement.
12. The terms of this Agreement shall not be altered, amended or modified, except in writing, signed by duly authorized officer of Employer and by General Manager.
13. New Mexico law shall govern the construction of the Agreement.

WITNESS our hands and seals this 25th day of November, 2003.



Leopoldo Pineda, Jr. General Manager

Socorro Electric Cooperative, Inc.
Employer

By: 

Board President

EMPLOYMENT AGREEMENT EXTENSION

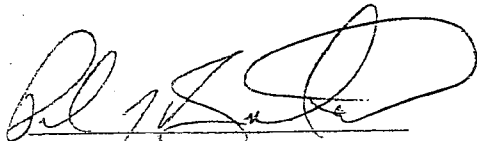
WHEREAS, Socorro Electric Cooperative, Inc. and Leopoldo Pineda, Jr. have entered into an Employment Agreement dated November 25, 2003 and

WHEREAS, such Employment Agreement expires December 31, 2007;

NOW, THEREFORE, the parties have agreed as follows:

1. The Employment Agreement dated November 25, 2003 by and between Socorro Electric Cooperative, Inc. and Leopoldo Pineda, Jr. shall be extended two additional years to expire December 31, 2009 as approved at Socorro Electric Cooperative, Inc. meeting dated November 14, 2007.
2. The remaining terms of such Employment Agreement shall remain in full force and effect.

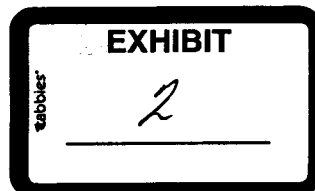
Dated this 19th day of November 2007.



Paul J. Bustamante
President



Leopoldo Pineda, Jr.
General Manager



EMPLOYMENT AGREEMENT EXTENSION

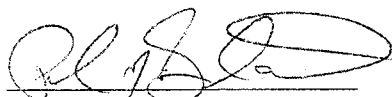
WHEREAS, Socorro Electric Cooperative, Inc. and Leopoldo Pineda, Jr. have entered into an Employment Agreement dated February 25, 2009 and

WHEREAS, such Employment Agreement expires December 31, 2009;

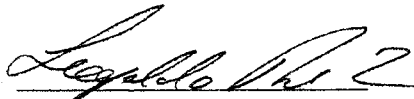
NOW, THEREFORE, the parties have agreed as follows:

1. The Employment Agreement dated February 25, 2009 by and between Socorro Electric Cooperative, Inc. and Leopoldo Pineda, Jr. shall be extended two additional years to expire December 31, 2011 as approved at Socorro Electric Cooperative, Inc. meeting dated February 9, 2009.
2. The remaining terms of such Employment Agreement shall remain in full force and effect.

Dated this 25th day of February 2009.



Paul J. Bustamante
President



Leopoldo Pineda, Jr.
General Manager

EXHIBIT

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