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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA  
BEFORE THE GRAND JURY

---000---

PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	
PLAINTIFFS,	)	INDICTMENT
	)	
V.	)	NO. 211045
	)	
RONALD R. GONZALES,	)	
JOSEPH AUGUST GUERRA III, AND	)	
NORCAL WASTE SYSTEMS, INC.,	)	
	)	
DEFENDANTS.	)	

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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
SAN JOSE, CALIFORNIA

VOLUME 4  
PAGES 448-581  
FEBRUARY 8, 2006

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APPEARANCES:

FOR THE PEOPLE:	JULIUS FINKELSTEIN DEPUTY DISTRICT ATTORNEY
	JAMES GIBBONS-SHAPIRO DEPUTY DISTRICT ATTORNEY
OFFICIAL COURT REPORTER:	SUE HERFURTH, C. S. R. LICENSE NO. 9645 SUE HERFURTH, CSR #9645

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I N D E X

W I T N E S S

P A G E

V O L U M E 4

ROBERT MORALES

450

EXHIBIT LIST

EXHIBIT

PAGE

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SUE HERFURTH, CSR #9645

450

1 SAN JOSE, CALIFORNIA FEBRUARY 8, 2006

2

3

PROCEEDINGS:

4

THE FOREMAN: LET ME CALL THIS SESSION OF GRAND JURY  
5 TO ORDER AND TAKE ROLL THIS MORNING.

6

(ROLL WAS TAKEN BY THE FOREMAN.)

7

MR. FINKELSTEIN: WHY DON'T WE CALL OUR NEXT

8

WITNESS.

9

ROBERT MORALES,

10

CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED

11

AS FOLLOWS:

12

THE WITNESS: I DO.

13

EXAMINATION:

14

BY MR. FINKELSTEIN:

15

Q. GOOD MORNING. COULD YOU PLEASE TELL US YOUR FULL

16

LEGAL NAME?

17

A. YES, SIR. ROBERT MORALES, M-O-R-A-L-E-S.

18

Q. MR. MORALES, YOU ARE THE SECRETARY-TREASURER OF THE

19

SANITARY TRUCK DRIVERS AND HELPERS UNION LOCAL 350?

20

A. YES, SIR.

21

Q. IS THE SANITARY TRUCK DRIVERS AND HELPERS LOCAL 350

22

AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS?

23

A. YES.

24

Q. IS SANITARY TRUCK DRIVERS AND HELPERS LOCAL 350

25

SOMETIMES REFERRED TO AS TEAMSTERS LOCAL 350?

26

A. YES, SIR.

27 Q. LET ME START WITH A FEW BACKGROUND QUESTIONS. THANK  
28 YOU FOR COMING IN THIS MORNING.

SUE HERFURTH, CSR #9645

451

1 A. THANK YOU, SIR.

2 Q. IS IT TRUE THAT YOU'VE BEEN THE SECRETARY-TREASURER  
3 FOR THE LOCAL 350 SINCE JULY 1 OF 1976?

4 A. YES, SIR.

5 Q. DO YOUR DUTIES INCLUDE THE GENERAL ADMINISTRATION OF  
6 THE LOCAL UNION?

7 A. YES, SIR.

8 Q. NEGOTIATING COLLECTIVE BARGAINING AGREEMENTS?

9 A. YES.

10 Q. RESOLVING GRIEVANCES?

11 A. YES, SIR.

12 Q. AND PARTICIPATING IN POLITICAL ACTIVITIES ON BEHALF  
13 OF THE UNION?

14 A. YES, SIR.

15 Q. HOW MANY MEMBERS ARE THERE, APPROXIMATELY, TODAY?

16 A. TODAY, OVER 2,000 MEMBERS.

17 Q. HOW MANY MEMBERS WERE THERE IN 2000?

18 A. IN 2000 -- OKAY. I WOULD SAY ABOUT 1,500,  
19 APPROXIMATELY.

20 Q. SO YOUR MEMBERSHIP HAS GROWN?

21 A. YES, SIR.

22 Q. CONGRATULATIONS.

23 A. THANK YOU, SIR.

24 Q. AS THE HEAD OF THE LOCAL -- AS SECRETARY-TREASURER

25 LOCAL 350, AND AS SOMEONE WHO IS INVOLVED IN POLITICAL  
26 ACTIVITIES ON BEHALF OF THE UNION, I WOULD LIKE TO ASK YOU A  
27 COUPLE OF QUESTIONS ABOUT THE SIZE OF THE MEMBERSHIP, OKAY?

28 A. ABOUT WHAT?

SUE HERFURTH, CSR #9645

452

1 Q. ABOUT THE NUMBERS OF MEMBERS THAT YOU HAVE.

2 A. OKAY.

3 Q. WOULD YOU SAY THAT, IN YOUR OPINION, HAVING MORE  
4 MEMBERS IS A GOOD THING FOR A UNION?

5 A. YES, SIR, IT IS.

6 Q. WHY IS THAT?

7 A. BECAUSE IT GIVES THE MEMBERS THE OPPORTUNITY TO HAVE  
8 MORE LOCATIONS WHERE THEY CAN GO TO WORK. IT GIVES THE UNION  
9 MORE STABILITY, MORE POWER IN ORDER TO SUPPORT OUR MEMBERS  
10 WHENEVER THEY NEED TO TAKE ACTIVITIES, ECONOMIC ACTIVITIES  
11 AGAINST EMPLOYERS, ET CETERA. AND THE NUMBER ONE THING IN MY  
12 MIND IS THAT I MAKE MORE JOBS AVAILABLE FOR MY MEMBERS SO THAT  
13 THE MORE COMPANIES THAT WE HAVE, THE LONGER THE OPPORTUNITIES  
14 TO, YOU KNOW, SECURE JOBS IN MORE AREAS.

15 Q. OKAY. BY THE WAY, I SHOULD HAVE ASKED YOU THIS  
16 BEFORE. YOUR MEMBERS ARE EMPLOYED THROUGHOUT THE BAY AREA?

17 A. YES, SIR. MY MEMBERS ARE FROM THE CITY AND COUNTY OF  
18 SAN FRANCISCO ALL THE WAY TO HOLLISTER.

19 Q. THAT WOULD INCLUDE THE CITY OF SAN JOSE?

20 A. YES, SIR.

21 Q. AND YOUR MEMBERS ARE GENERALLY EMPLOYED IN WHAT  
22 INDUSTRY?

23 A. THEY ARE, THE VAST MAJORITY ARE IN THE GARBAGE  
24 INDUSTRY. WE REPRESENT MEMBERS IN GARBAGE COMPANIES ALL THE  
25 WAY FROM SAN FRANCISCO TO DALY CITY, SOUTH SAN FRANCISCO, SAN  
26 BRUNO, MOUNTAIN VIEW, LOS ALTOS, SUNNYVALE, SAN JOSE, GILROY,  
27 AND HOLLI STER.

28 Q. AND, GENERALLY SPEAKING, YOUR MEMBERS ARE EMPLOYED IN

SUE HERFURTH, CSR #9645

453

1 SUCH CAPACITIES AS DRIVING THE TRUCKS AND COLLECTING THE TRASH  
2 AND RECYCLABLES?

3 A. YES, SIR, AMONG OTHERS.

4 Q. THAT ALSO INCLUDES MECHANICS?

5 A. YES, SIR.

6 Q. ALSO THE PEOPLE WHO SORT THE RECYCLABLES?

7 A. THAT'S CORRECT.

8 Q. AND AS I UNDERSTAND IT, THE FACILITY WHERE THE  
9 SORTING TAKES PLACE IS SOMETIMES KNOWN AS A MATERIALS RECOVERY  
10 FACILITY?

11 A. YES, SIR.

12 Q. AND THAT'S SOMETIMES ABBREVIATED AS MRF?

13 A. YEAH.

14 Q. THE WORKERS ARE SOMETIMES REFERRED TO AS MRF WORKERS?

15 A. SORTERS OR MATERIAL HANDLERS.

16 Q. OR MRF WORKERS?

17 A. OR MRF WORKERS.

18 Q. WITH REGARD TO THE NUMBER OF MEMBERS, WOULD YOU SAY  
19 THAT HAVING MORE MEMBERS GIVES THE UNION THE ABILITY TO  
20 COLLECT MORE DUES?

21 A. THAT' S PART OF IT.

22 Q. AND WOULD IT ALSO GIVE THE UNION MORE POLITICAL  
23 CLOUT?

24 A. UH -- YES AND NO. YOU KNOW, MOST OF THE TIMES THE  
25 WAY THAT WE HELP OUR FRIENDS IN POLITICS IS THROUGH  
26 MOBILIZATION OF MEMBERSHIP, YOU KNOW, BY WALKING PRECINCTS,  
27 MANNING PHONE BANKS, ACTIVITY LIKE THAT WHERE YOU CANNOT PUT A  
28 PRICE ON IT. IT' S ON A VOLUNTARY BASIS.

SUE HERFURTH, CSR #9645

454

1 Q. IF YOU HAVE MORE MEMBERS, YOU HAVE MORE PEOPLE TO  
2 WALK PRECINCTS?

3 A. THAT' S CORRECT.

4 Q. TO MAN PHONE BANKS?

5 A. CORRECT.

6 Q. ALSO, DOWN IN SAN JOSE, IS YOUR UNION AFFILIATED WITH  
7 SOUTH BAY LABOR COUNCIL?

8 A. YES, SIR.

9 Q. WHAT IS SOUTH BAY LABOR COUNCIL?

10 A. SOUTH BAY LABOR COUNCIL IS LIKE THE DISTRICT OF  
11 UNIONS ALL THE UNIONS BELONG TO, AND YOU PAY A PER CAPITA TAX  
12 EVERY MONTH FOR MEMBERS THAT YOU HAVE IN THE LOCAL UNION. AND  
13 IT' S THE CONCENTRATION, YOU KNOW, OF LABOR HEADQUARTERS FOR  
14 UNIONS IN SAN JOSE.

15 Q. SOME PEOPLE MIGHT DESCRIBE IT AS THE VOICE OF LABOR  
16 IN THE SOUTH BAY?

17 A. YES, IN SOME CASES.

18 Q. OKAY. IS SOUTH BAY LABOR COUNCIL POLITICALLY ACTIVE?

19 A. I THINK SO, YES, THEY ARE.

20 Q. AND IN CONNECTION WITH SOUTH BAY LABOR COUNCIL,  
21 WOULDN'T YOU AGREE THAT UNIONS WITH LARGER MEMBERSHIPS WHO  
22 BELONG TO SOUTH BAY LABOR COUNCIL CAN EXERCISE MORE SWAY AND  
23 INFLUENCE OVER THE DIRECTION THAT SOUTH BAY LABOR COUNCIL  
24 TAKES THAN UNIONS WITH SMALLER MEMBERS?

25 A. YEAH, LIKE MINE IS A SMALLER UNION, SO THE ANSWER TO  
26 YOUR QUESTION WOULD BE YES, THEY DO HAVE MORE SAY BECAUSE OF  
27 THEIR SIZE.

28 Q. OKAY. LET ME TURN TO THE YEAR 2000, WHICH IS WHAT

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455

1 BRINGS US ALL TOGETHER.

2 A. OKAY.

3 Q. IN THE YEAR 2000, DID THE CITY OF SAN JOSE HAVE  
4 CONTRACTS WITH WASTE MANAGEMENT AND GREEN TEAM FOR RECYCLE  
5 PLUS SERVICES?

6 A. YES, SIR.

7 Q. WHICH UNION REPRESENTED THE MRF WORKERS AT THE GREEN  
8 TEAM RECYCLING FACILITY?

9 A. THE CARPENTER'S UNION.

10 Q. WHICH UNION REPRESENTED THE MRF WORKERS AT THE WASTE  
11 MANAGEMENT RECYCLING FACILITY?

12 A. MY LOCAL UNION.

13 Q. AND HOW MANY MRF WORKERS DID WASTE MANAGEMENT EMPLOY  
14 IN SAN JOSE?

15 A. APPROXIMATELY 43.

16 Q. IN THE YEAR 2000, DID THE CITY OF SAN JOSE ISSUE A

17 REQUEST FOR PROPOSALS FOR RECYCLE PLUS SERVICES TO START IN  
18 2002?

19 A. YES, SIR.

20 Q. AND WERE PROPOSERS REQUIRED TO DEMONSTRATE A  
21 COMMITMENT TO WORKER RETENTION AND LABOR PEACE?

22 A. YES, SIR.

23 Q. AND DID WORKER RETENTION REFER TO THE HIRING OF  
24 WORKERS THAT WOULD BE DISPLACED AS A RESULT OF SELECTION OF A  
25 NEW VENDOR?

26 A. YES, SIR.

27 Q. DID MAYBE PEACE REFER TO MINIMIZING THE PROBABILITY  
28 OF LABOR DISRUPTIONS?

SUE HERFURTH, CSR #9645

456

1 A. THAT'S CORRECT.

2 Q. DID NORCAL SUBMIT THAT PROPOSAL TO THE CITY?

3 A. YES, THEY DID.

4 Q. AND DID THE NORCAL PROPOSAL INCLUDE SUBCONTRACTING  
5 THE RECYCLING PLUS SERVICES TO CALIFORNIA WASTE SOLUTIONS, OR  
6 CWS?

7 A. YES, SIR.

8 Q. AND WAS CWS AN OAKLAND BASED COMPANY THAT DID NOT  
9 HAVE A RECYCLING FACILITY IN SAN JOSE AT THAT TIME?

10 A. NO, THEY DIDN'T.

11 Q. SO IT'S CORRECT THEY WERE AN OAKLAND BASED COMPANY  
12 AND THEY DIDN'T HAVE A RECYCLING FACILITY IN SAN JOSE?

13 A. THAT'S CORRECT.

14 Q. LET ME INTERRUPT THE QUESTIONS FOR A MOMENT. THIS

15 YOUNG LADY IS TRYING TO TAKE DOWN EVERYTHING THAT EVERYONE  
16 SAYS, AND SHE CAN ONLY TAKE ONE PERSON AT TIME, SO IF YOU CAN  
17 JUST PAUSE A MOMENT WHEN I AM ASKING THE QUESTION AND MAKE  
18 SURE I COMPLETELY FINISH THE QUESTION BEFORE YOU START YOUR  
19 ANSWER.

20 AND I WILL TRY TO NOT TO START THE NEXT QUESTION --

21 A. I'M SORRY.

22 Q. THAT'S OKAY. I JUST WANT TO, I KNOW YOU'RE ANXIOUS  
23 TO GIVE US YOUR INFORMATION, BUT WE JUST NEED TO DO THIS ONE  
24 AT A TIME SO THE REPORTER CAN TAKE IT ALL DOWN AND HAVE AN  
25 ACCURATE RECORD. OKAY?

26 A. THANK YOU.

27 Q. NOW, AT THE TIME WE'RE TALKING ABOUT THE YEAR 2000,  
28 DID CWS HAVE AN EXISTING AGREEMENT WITH THE LONGSHOREMEN'S

SUE HERFURTH, CSR #9645

457

1 UNION, ILWU LOCAL 6, THAT RECOGNIZED THAT UNION'S RIGHT TO  
2 REPRESENT THE MRF WORKERS AT CWS'S OAKLAND FACILITY?

3 A. TO THE BEST OF MY KNOWLEDGE, THE ANSWER IS YES.

4 Q. OKAY. AND DID THE NORCAL PROPOSAL INCLUDE AN  
5 AGREEMENT WITH THE LONGSHOREMEN UNION THAT WOULD RECOGNIZE THE  
6 LONGSHOREMEN'S UNION AS BARGAINING REPRESENTATIVE FOR MRF  
7 WORKERS AT A FUTURE CWS RECYCLE FACILITY IN SAN JOSE?

8 A. NO. NOT, THAT WAS NOT MY UNDERSTANDING. MY  
9 UNDERSTANDING IS THAT THE REFERENCE -- WHEN NORCAL SUBMITTED  
10 THE CONTRACT, THEY DID MAKE REFERENCE THAT CWS HAD A CONTRACT  
11 WITH LONGSHOREMEN'S LOCAL 6. BUT I DO NOT RECALL THE DOCUMENT  
12 STATING THAT THEY HAD THE RIGHT TO FOLLOW THE OTHER COMPANIES

13 THAT CWS -- IT MAY BE IN THE COLLECTIVE BARGAINING AGREEMENT,  
14 BUT I NEVER HAD THE OPPORTUNITY TO SEE THAT AGREEMENT.

15 Q. YOU DON'T KNOW WHETHER OR NOT CWS HAD REACHED AN  
16 AGREEMENT WITH THE LONGSHOREMEN THAT WOULD INCLUDE  
17 REPRESENTING THE MRF WORKERS IN SAN JOSE AT THAT NEW CWS  
18 FACILITY?

19 A. IF THEY DID, I WOULD HAVE CONSIDERED THAT TO BE  
20 ILLEGAL.

21 Q. BUT YOU DON'T KNOW WHETHER THEY DID OR DIDN'T?

22 A. TO THE BEST OF MY KNOWLEDGE NO, SIR.

23 Q. OKAY. WELL, LET ME ASK THE QUESTION THIS WAY.

24 ASSUMING THAT CWS HAD AN AGREEMENT SUCH AS I  
25 DESCRIBED WHEREBY THE LONGSHOREMEN AND CWS AGREED THAT IF CWS  
26 OPENED UP A NEW FACILITY IN SAN JOSE THEY WOULD REPRESENT THE  
27 WORKERS THERE AS WELL, ASSUMING THEY HAD SUCH AN AGREEMENT.  
28 WOULD THAT MEAN THAT IF NORCAL WERE SELECTED TO PROVIDE THESE

SUE HERFURTH, CSR #9645

458

1 RECYCLE PLUS SERVICES, THE TEAMSTER MRF WORKERS WHO HAD BEEN  
2 FORMERLY EMPLOYED BY WASTE MANAGEMENT WOULD HAVE HAD TO CHANGE  
3 UNIONS IF THEY WANTED TO WORK FOR CWS?

4 A. IN ACCORDANCE WITH THE LAW, THAT WOULD HAVE BEEN  
5 ILLEGAL.

6 Q. I UNDERSTAND THAT'S YOUR VIEW OF IT, BUT THAT'S NOT  
7 EXACTLY MY QUESTION. WE'LL GET TO THAT A LITTLE LATER ON.  
8 I'M JUST TRYING TO ESTABLISH IF THEY HAD SUCH AN AGREEMENT AND  
9 THE AGREEMENT WERE ENFORCED. I KNOW YOU THINK IT'S ILLEGAL,  
10 BUT ASSUMING IT WERE ENFORCED, THAT WOULD HAVE MEANT THAT YOUR

11 MEMBERS WHO WERE OFFERED JOBS AT CWS WHO PREVIOUSLY WORKED AT  
12 WASTE MANAGEMENT WOULD HAVE HAD TO CHANGE UNIONS IF THAT WERE  
13 THE CASE, RIGHT?

14 A. I HAVE TO GIVE YOU THE SAME ANSWER, THAT IT COULD  
15 HAVE NEVER BEEN POSSIBLE BECAUSE THAT WOULD HAVE BEEN AN  
16 ILLEGAL AGREEMENT. THEY HAD NO RIGHT TO ENTER INTO AN  
17 AGREEMENT LIKE THAT, AND MY MEMBERS WHO WERE MEMBERS OF THE  
18 TEAMSTERS WOULD STILL RETAIN THE RIGHT TO SELECT WHO THE LOCAL  
19 REPRESENTATIVE WAS TO BE.

20 YOU CANNOT TAKE ONE UNION OR ONE LOCATION TO ANOTHER  
21 AND SAY, THIS IS GOING TO BE THE UNION.

22 Q. MR. MORALES, I UNDERSTAND YOU HAVE A VIEW OF THE LAW  
23 IN THIS AREA, BUT I THINK YOU'RE JUMPING THE GUN A LITTLE BIT.  
24 I WILL GET TO THAT, I'LL GIVE YOU AN OPPORTUNITY TO EXPRESS  
25 YOUR VIEWS.

26 I FIRST WANT TO LAY THE FOUNDATION, I WANT TO SET  
27 THE SCENE OF WHAT THE PROBLEM WAS IN 2000 FROM YOUR  
28 PERSPECTIVE, AND THAT'S WHY I'M ASKING YOU. I KNOW YOU DON'T

SUE HERFURTH, CSR #9645

459

1 AGREE WITH THE AGREEMENT, YOU BELIEVE IT'S AN ILLEGAL  
2 AGREEMENT; I'M SIMPLY SAYING IF THE AGREEMENT WERE ENFORCED  
3 THROUGH SOME MAGIC, IT WOULD HAVE MEANT THAT YOUR WORKERS  
4 WOULD HAVE TO CHANGE UNIONS, CORRECT?

5 A. IF IT WAS LEGAL, YES.

6 Q. WHEN SAFEWAY OPENS UP NEW STORES IN CALIFORNIA, DO  
7 EMPLOYEES AT THE NEW STORE HAVE TO TO PICK A NEW UNION?

8 A. IT DEPENDS WHO REPRESENTS THEM. SAFEWAY HAS MANY

9 UNIONS THAT REPRESENT WORKERS, INCLUDING TEAMSTERS.

10 Q. I UNDERSTAND, BUT WHEN THEY OPEN UP NEW STORES, DO  
11 THEY HOLD AN ELECTION AS TO WHAT UNION IS GOING TO REPRESENT  
12 THEM?

13 A. YOU KNOW, I'M NOT TOO FAMILIAR WITH THEIR COLLECTIVE  
14 BARGAINING AGREEMENTS, BUT IN MOST CASES THERE IS IMMEDIATE  
15 RECOGNITION WHERE THEY WILL AGREE THE RETAIL CLERKS WILL  
16 CONTINUE TO BE THEIR COLLECTIVE BARGAINING AGENT, AND THERE  
17 WERE CASES WHERE THE LOCATIONS MAY CHANGE.

18 YOU TAKE HOTELS, FOR INSTANCE. THERE ARE TIMES WHEN  
19 HOTELS ARE REPRESENTED BY DIFFERENT UNIONS, BUT THE MAJOR  
20 UNION IS THE LOCAL EMPLOYEE'S UNION, BUT IN SOME CASES THE  
21 TEAMSTERS WILL REPRESENT HOTEL WORKERS WALL TO WALL. SO I  
22 COULD NOT QUOTE FROM CONTRACTS AT SAFEWAY.

23 Q. WOULD IT BE FAIR TO SAY WHEN AN EXISTING EMPLOYER  
24 EXPANDS ITS OPERATION, SOMETIMES THEY GET TO RECOGNIZE THE  
25 EXISTING UNION, SOMETIMES THE WORKERS HAVE TO CHOOSE WHICH  
26 UNION?

27 A. YES, SIR.

28 Q. IT DEPENDS?

SUE HERFURTH, CSR #9645

460

1 A. YES, IT DEPENDS.

2 Q. OKAY. NOW, AT SOME POINT YOU LEARNED IN THE YEAR  
3 2000 THAT CWS WAS PROPOSING TO RECOGNIZE THE LONGSHOREMEN FOR  
4 THE MRF WORKERS AT ITS NEW SAN JOSE FACILITY, RIGHT?

5 A. YES, SIR.

6 Q. WOULD YOU, HOW DID YOU LEARN THAT, FIRST OF ALL?

7 A. UH -- IT WAS NOT THE FIRST TIME THAT THIS TAKES PLACE  
8 IN SAN JOSE.

9 Q. SORRY?

10 A. IT IS NOT THE FIRST TIME A SITUATION LIKE THAT TAKES  
11 PLACE IN SAN JOSE. WE HAVE BEEN DOING THIS SINCE 1972, WHERE  
12 DIFFERENT HAULERS, GARBAGE HAULERS HAVE CHANGED FROM TIME TO  
13 TIME. WE STARTED WITH SAN JOSE, GARDEN CITY DISPOSAL, THEN  
14 WENT TO BFI, THEN BFI LOST THE FRANCHISE 14 YEARS LATER. THEN  
15 WE WENT INTO WASTE MANAGEMENT, THEN WESTERN WASTE, THEN GREEN  
16 TEAM AND NORCAL.

17 SO EVERY TIME THE FRANCHISES ARE OPEN, YOU KNOW, WE  
18 IMMEDIATELY GO TO CITY HALL AND START GATHERING EVIDENCE AS  
19 TO, YOU KNOW, HOW THE PLACEMENT OF THE WORKERS IS GOING TO BE,  
20 WHAT DOES THE CONTRACT CALL FOR. SO WE HAVE BEEN DOING THIS  
21 PROCESS FOR, I WOULD SAY WITH THREE OR FOUR DIFFERENT MAYORS.

22 Q. I UNDERSTAND, BUT MY QUESTION IS A LOT SIMPLER THAN  
23 WHAT YOU SAID. I WANT TO KNOW, IN THE YEAR 2000, HOW DID YOU  
24 FIRST LEARN THAT NORCAL SUBCONTRACTOR CWS WAS PROPOSING TO  
25 RECOGNIZE LONGSHOREMEN FOR THE MRF WORKERS IN SAN JOSE?

26 A. UH -- I WILL SAY TO YOU THAT OUR FIRST ENCOUNTER WAS  
27 WITH NORCAL. BECAUSE IF YOU READ THE FRANCHISE, NORCAL IS IN  
28 FACT THE HAULER THAT IS IN CHARGE, NOT ONLY OF GARBAGE BUT

SUE HERFURTH, CSR #9645

461

1 ALSO RECYCLING. EVERY OPERATION IN THE FRANCHISE CALLS FOR  
2 NORCAL TO BE A RESPONSIBLE PARTY. WHEN WE STARTED READING THE  
3 DOCUMENTS AFTER LEARNING FROM THEM THAT THEY WERE GOING TO  
4 COME HERE, AND AFTER NORCAL HAD SIGNED A MEMORANDUM OF

5 UNDERSTANDING WITH MY LOCAL SAYING THAT IF THEY OBTAIN THIS  
6 FRANCHISE THAT THEY WERE GOING TO SIT DOWN AND NEGOTIATE A  
7 COLLECTIVE BARGAINING AGREEMENT WITH LOCAL 350. AND WE GOT  
8 COPIES OF THE FRANCHISING DOCUMENTS.

9 THAT'S WHEN WE FOUND OUT THERE WAS A COMPANY CALLED  
10 CWS WHO HAD BEEN INVITED BY NORCAL TO DO THE SUBCONTRACTING  
11 FOR THE MRF.

12 Q. LET ME SEE IF I CAN DISCERN FROM THAT ANSWER WHAT  
13 YOU'RE TELLING US. ARE YOU SAYING THAT YOU FIRST LEARNED  
14 ABOUT THE ISSUE OF CWS PROPOSING TO USE LONGSHOREMEN WHEN YOU  
15 READ NORCAL'S PROPOSAL?

16 A. NO. I READ THE CITY OF SAN JOSE PROPOSAL.

17 Q. YOU MEAN THE REQUEST FOR PROPOSALS?

18 A. YES. IT INCLUDED -- WHEN THE VENDORS CAME BACK, THE  
19 FIRST PROCESS IS THE CITY PUTS OUT THE RFP, THEN THE  
20 INDIVIDUAL HAULERS COME IN AND MAKE THEIR INDIVIDUAL  
21 PROPOSALS.

22 Q. RIGHT.

23 A. THE PROPOSALS FROM NORCAL, IT INCLUDED THAT. THAT  
24 CWS WAS GOING TO COME IN.

25 Q. SO YOU FIRST LEARNED ABOUT THIS ISSUE WITH THE  
26 LONGSHOREMEN BY READING NORCAL'S PROPOSAL?

27 A. THAT'S CORRECT.

28 Q. OKAY. THAT'S REALLY ALL I WAS ASKING.

SUE HERFURTH, CSR #9645

462

1 A. OKAY.

2 Q. DID YOU GO DOWN TO CITY HALL AND GET A COPY OF IT, OR  
Page 15

3 DID SOMEONE GIVE YOU A COPY, HOW DID THAT WORK?

4 A. THE PRESIDENT OF THE LOCAL, LARRY DAUGHERTY. HE  
5 OBTAINED A COPY OF THE DOCUMENTS IN QUESTION AND SO ON. AS  
6 SOON AS, YOU KNOW, THE ACTIVITY STARTS THAT THE CITY IS GOING  
7 TO PUT OUT FOR BIDS, YOU KNOW, WE TALK TO DIFFERENT PEOPLE IN  
8 DIFFERENT DEPARTMENTS IN THE CITY AND, INCLUDING THE CITY  
9 COUNCIL, INCLUDING THE STAFF, THE ENVIRONMENTAL OFFICE, AND SO  
10 ON. WE TALK TO EVERYBODY THAT WANTS TO TALK TO US TO GET  
11 INFORMATION.

12 Q. OKAY. SO I'M GETTING THE IMPRESSION, CORRECT ME IF  
13 I'M WRONG, THAT WHENEVER THE CITY PUTS OUT A REQUEST FOR  
14 PROPOSALS FOR THE SERVICES, YOU OR SOMEONE IN YOUR UNION  
15 ROUTINELY LOOKS AT THE PROPOSALS TO SPOT ANY LABOR ISSUES.

16 A. THAT'S CORRECT.

17 Q. DO YOU RECALL WHEN IT WAS THAT THIS ISSUE CAME TO  
18 YOUR ATTENTION FIRST?

19 A. I DON'T EXACTLY REMEMBER THE DATE, BUT I KNOW THAT IT  
20 WAS AS SOON AS THE PROPOSAL REPRESENTATIVE BY THE EMPLOYERS,  
21 MY BUSINESS AGENT, YOU KNOW, WHO WORKS FOR MY LOCAL, THEY ARE  
22 CONSTANTLY AT CITY HALL, YOU KNOW, GETTING INFORMATION. AND  
23 WE ALSO TALKED TO THE CITY COUNCIL MEMBERS, AND ALSO THE SOUTH  
24 BAY LABOR COUNCIL YOU MENTIONED. THEY ARE VERY ACTIVE IN  
25 HELPING US TO GATHER INFORMATION AND KEEP US ABREAST OF WHAT'S  
26 TAKING PLACE.

27 Q. WHAT'S NAME OF YOUR BUSINESS AGENT?

28 A. LARRY DAUGHERTY, D-A-U-G-H-E-R-T-Y, AND ALSO JAMES

SUE HERFURTH, CSR #9645

1 FURGAS.

2 Q. I THOUGHT LARRY DAUGHERTY WAS PRESIDENT.

3 A. HE' S BUSINESS AGENT ALSO.

4 COURT REPORTER: WOULD YOU SPELL THE SECOND NAME?

5 THE WITNESS: JAMES F-U-R-G-A-S.

6 BY MR. FINKELSTEIN:

7 Q. AND AT THE RISK OF SEEMING LESS THAN KNOWLEDGEABLE  
8 ABOUT THESE MATTERS, IS YOUR POSITION HIGHER OR LOWER THAN THE  
9 PRESIDENT' S POSITION IN THE UNION?

10 A. HIGHER.

11 Q. YOUR POSITION IS HIGHER?

12 A. YES, SIR. I' M THE PRINCIPAL OFFICER OF THE LOCAL.

13 Q. OKAY. SO WHEN YOU SAW THAT IN NORCAL' S PROPOSAL IT  
14 WAS BEING PROPOSED THAT THE LONGSHOREMEN REPRESENT CWS' S NEW  
15 MRF WORKERS IN SAN JOSE, DID YOU HAVE A PROBLEM WITH THAT?

16 A. YES, I DID.

17 Q. WOULD YOU SAY YOU HAD A BIG PROBLEM WITH THAT?

18 A. YES.

19 Q. WOULD YOU SAY THAT THE PROSPECT, THE POSSIBILITY THAT  
20 THE TEAMSTERS MRF WORKERS MIGHT HAVE TO JOIN THE  
21 LONGSHOREMEN' S UNION IN ORDER TO SEEK EMPLOYMENT WITH CWS WAS  
22 SOMETHING THAT CONCERNED YOU VERY MUCH?

23 A. NOT ONLY THAT, BUT WHAT CONCERNED ME THE MOST WAS  
24 THAT I GOT THE IMPRESSION THAT CWS WAS GOING TO BRING THEIR  
25 OWN WORKERS FROM OAKLAND, BECAUSE IN THE COLLECTIVE BARGAINING  
26 AGREEMENT WITH THEM, THEY WERE BEING PAID LESS WAGES. SO MY  
27 FEAR WAS THAT MY 43 MEMBERS WERE TO GOING TO END UP WITHOUT A  
28 JOB, THAT WAS MY PRIMARY CONCERN, AND WHEN WE WENT TO CITY

1 HALL WE WERE NOT ARGUING THE ISSUE WHETHER THEY WERE GOING TO  
2 BE IN MY LOCAL, MEMBERS OF MY LOCAL, BUT MY MAIN ISSUE WAS TO  
3 SAVE THEIR JOBS.

4 Q. SO YOU'RE SAYING NOW THAT WHETHER THEY WERE  
5 REPRESENTED BY THE TEAMSTERS OR THE OTHER UNION WAS NOT THE  
6 MAIN ISSUE FOR YOU?

7 A. NO, MY MAIN ISSUE WAS THAT I HAVE TO SAVE THEIR JOBS,  
8 AND MY SECOND ISSUE WAS THAT THEY WERE ALREADY MY MEMBERS  
9 PRIOR TO YEAR 2000 AND THEREFORE, YOU KNOW, THEY HAD THE RIGHT  
10 TO STAY IN MY LOCAL BECAUSE I WAS THE UNION REPRESENTATIVE OF  
11 THESE WORKERS.

12 Q. AND YOU CONSIDERED THE POTENTIAL LOSS OF THE 43  
13 WORKERS AN IMPORTANT ISSUE FOR YOUR UNION?

14 A. THAT'S CORRECT.

15 Q. AND WHY IS THAT?

16 A. BECAUSE, YOU KNOW, THESE EMPLOYEES HAD BEEN MEMBERS  
17 OF MY LOCAL PRIOR TO THE ACTION OF CITY OF SAN JOSE, SOME OF  
18 THEM HAD JOINED IN THE '90S, THE SAME WORKERS, AND, YOU KNOW,  
19 UNIONS ARE NOT IN THE BUSINESS OF LOSING JOBS. WE'RE, EVERY  
20 DAY OF OUR LIFE WE TRY TO ORGANIZE MORE JOBS. WE DO  
21 EVERYTHING WE CAN LEGALLY TO RETAIN OUR JURISDICTIONS.

22 Q. I HAVE SEEN SOME NEWS REPORTS THAT SUGGEST OVERALL IN  
23 THIS COUNTRY UNION MEMBERSHIP HAS BEEN DECLINING.

24 A. THAT'S CORRECT, AND I DON'T WANT THAT TO HAPPEN TO MY  
25 LOCAL.

26 Q. UNDERSTANDABLY SO. YOU SAY YOUR PRIMARY ISSUE WAS  
27 THE LOSS OF THE JOBS AND NOT THE UNION THAT REPRESENTED THESE  
28 WORKERS, CORRECT?

1           A.        I SAID, I THINK I ANSWERED YOU IN TWO PARTS. I SAID  
2 MY PRIMARY CONCERN AND RESPONSIBILITY WAS TO SAVE THE JOBS.  
3 THE SECOND CONCERN OF MINE IS THAT THEY WERE MY MEMBERS AND  
4 THEY SHOULD REMAIN IN MY LOCAL.

5           Q.        SO YOU HAD TWO CONCERNS?

6           A.        YES, SIR.

7           Q.        LET ME ADDRESS THE FIRST CONCERN, THE LOSS OF JOBS,  
8 REGARDLESS OF WHICH UNION REPRESENTED THEM. DIDN'T THE RFP  
9 CONTAIN A PROVISION THAT ANY CONTRACTOR RECEIVING A CONTRACT  
10 WITH THE CITY HAD TO GIVE ANY DISPLACED WORKERS A RIGHT TO  
11 FIRST REFUSAL ON THESE JOBS?

12          A.        THAT WAS MY JOB TO ENFORCE THAT.

13          Q.        BUT THAT WAS ALREADY A PROVISION OF THE RFP.

14          A.        YES, BUT SOMETIMES DURING THE COURSE OF THE  
15 PROCEEDINGS, IN SOME CASES THAT GETS LOST. AND MY JOB WAS TO  
16 MAKE SURE, YOU KNOW, THAT THAT WAS GOING TO TAKE PLACE.

17          Q.        NOW, WASN'T THERE ANOTHER ISSUE WITH REGARD TO CWS,  
18 NAMELY THAT THE MRF WORKERS EMPLOYED BY CWS RECEIVED LOWER  
19 WAGES AND BENEFITS THAN YOUR TEAMSTER MRF WORKERS?

20          A.        THAT'S CORRECT, AND IN ADDITION TO THE TWO ISSUES YOU  
21 BROUGHT UP BEFORE, PREVAILING WAGES WAS ALSO PART OF THE RFP.  
22 SO MY CONCERN WAS THAT THE LONGSHOREMEN COMING IN WITH \$7.25  
23 AND BENEFITS, ALL ALONG MEMBERS WERE ALREADY MAKING MORE THAN  
24 THAT, \$10.85 IN WAGES. AND I WANTED TO MAKE SURE THAT THEY  
25 WERE NOT GOING TO IMPORT THE CONTRACT FROM OAKLAND TO SAN JOSE  
26 AND LOWER THE CONDITIONS OF MY MEMBERS IF THEY WERE TO REMAIN  
27 WITH THE LOCAL.

28 Q. YEAH. SO YOU WANTED WORKERS TO BE PAID NO LESS THAN

SUE HERFURTH, CSR #9645

466

1 THEIR EXISTING WAGES AND BENEFITS?

2 A. THAT'S CORRECT.

3 Q. THAT WAS SOMETHING THAT WAS GUARANTEED IN THE RFP,  
4 CORRECT?

5 A. WELL, IT TALKS ABOUT, THE RFP TALKS ABOUT PREVAILING  
6 WAGES.

7 Q. DIDN'T THE CITY ATTORNEY TAKE THE POSITION PREVAILING  
8 WAGES DIDN'T APPLY TO THE MRF WORKERS?

9 A. THAT'S CORRECT.

10 Q. SO THE ISSUE FOR YOU WAS TO TRY TO GET THESE WORKERS  
11 A DEAL WHERE THEY WOULD GET NO LESS THAN THEIR EXISTING WAGES  
12 AND BENEFITS?

13 A. I WOULDN'T CALL IT A DEAL, I JUST WANTED TO MAKE SURE  
14 THAT JUSTICE WAS DONE.

15 Q. BY JUSTICE, YOU MEAN NO LESS THAN EXISTING WAGES AND  
16 BENEFITS?

17 A. OR BETTER.

18 Q. THAT'S YOUR JOB AS THEIR REPRESENTATIVE?

19 A. THAT'S CORRECT.

20 Q. NOTHING WRONG WITH THAT, CORRECT?

21 A. THAT'S RIGHT, SIR.

22 Q. NOW, YOU TOLD US THAT THIS WAS A BIG PROBLEM FOR YOU,  
23 CORRECT?

24 A. YES.

25 Q. AND YOU WERE CONCERNED ABOUT IT?

26 A. THAT' S CORRECT.  
27 Q. DID YOU DO ANYTHING TO TRY TO GET CWS TO USE  
28 TEAMSTERS INSTEAD OF LONGSHOREMEN AND TO PAY EXISTING, NO LESS

SUE HERFURTH, CSR #9645

467

1 THAN EXISTING WAGES AND BENEFITS AT THE NEW CWS RECYCLING  
2 FACILITY?

3 A. THAT' S CORRECT.

4 Q. OKAY. YOU' VE ANSWERED THE QUESTION YOU DID  
5 SOMETHING; I' M TRYING TO BREAK THIS UP INTO SMALLER BITES.

6 WHAT WAS THE FIRST THING YOU DID TO TRY TO GET CWS  
7 TO USE TEAMSTERS INSTEAD OF LONGSHOREMEN IN ITS NEW SAN JOSE  
8 RECYCLING FACILITY?

9 A. WE, IT WAS A LONG PROCESS. WE HAD CONVERSATIONS WITH  
10 THE PRESIDENT OF CWS.

11 Q. I WANT TO KNOW THE FIRST THING YOU DID.

12 A. I GOT TO TELL YOU IT' S A FEW YEARS AGO. THE ONLY  
13 THING I CAN TELL YOU IS THAT WE TRIED EVERYTHING TO CONVINC  
14 CWS, IMPRESS ON THE COMPANY AND ITS OFFICERS TO RECOGNIZE THE  
15 RIGHT OF OUR WORKERS TO THEIR JOBS AND THAT THEY SHOULD HIRE  
16 THEM. WE ALSO WENT TO THE NATIONAL LABOR RELATIONS BOARD.

17 Q. I WILL GET INTO ALL OF THAT; I' M NOT REALLY ASKING  
18 FOR A LARGE SUMMARY OF EVERYTHING YOU DO. I' M TRYING TO SEE  
19 IF YOU REMEMBER THE FIRST THING YOU DID. IF YOU DON' T, THAT' S  
20 OKAY.

21 A. WE CONTACTED THE COMPANY, AND ALSO CONTACTED NORCAL.

22 Q. SO THE FIRST THING YOU REMEMBER DOING IS CONTACTING  
23 CWS AND NORCAL ABOUT THIS ISSUE?

- 24 A. ALSO THE CITY OFFICIALS.  
25 Q. OF THOSE THREE THINGS, WHAT WAS THE FIRST THING YOU  
26 DID?  
27 A. I DON' T RECALL.  
28 Q. WHO DID YOU CONTACT AT CWS?

SUE HERFURTH, CSR #9645

468

- 1 A. I CONTACTED THE PRESIDENT OF THE COMPANY.  
2 Q. DO YOU REMEMBER HIS NAME?  
3 A. DAVID DUONG.  
4 Q. D-U-O-N-G?  
5 A. YES, SIR.  
6 Q. WHO DID YOU CONTACT AT NORCAL?  
7 A. I CONTACTED MR. ARCHIE HUMPHREY.  
8 Q. H-U-M-P-H-R-E-Y?  
9 A. YES.  
10 Q. WHO IS HE?  
11 A. EXECUTIVE VICE PRESIDENT OF NORCAL CORPORATION. I  
12 ALSO CONTACTED MICHAEL SANGIACOMO, THE CHIEF EXECUTIVE OFFICER  
13 OF NORCAL.  
14 I CONTACTED THE OTHER OFFICERS, YOU KNOW, AND I  
15 HAPPEN TO HAVE CONTRACTS WITH NORCAL IN MANY LOCATIONS, SO I  
16 KNOW A LOT OF THEIR OFFICERS, AND I CONTACTED THEM BECAUSE I  
17 ALWAYS MAINTAIN THE POSITION THAT IT WAS THEIR RESPONSIBILITY  
18 BECAUSE THEY ARE THE ONES WHO BROUGHT IN CWS AND, YOU KNOW,  
19 WITHOUT TELLING US. AND SO I CONTACTED THEM AND ALSO, YOU  
20 KNOW, CITY COUNCIL PEOPLE, I CONTACTED THE MAYOR' S OFFICE.  
21 Q. CAN YOU GIVE US SOME NAMES OF WHO AT CITY HALL YOU

22 SPOKE TO?

23 A. I CONTACTED MAYOR RON GONZALES. I CONTACTED THE  
24 PEOPLE FROM THE ENVIRONMENTAL DEPARTMENT, THE PEOPLE WHO WERE  
25 PUTTING THE CONTRACT TOGETHER.

26 Q. WHO?

27 A. MOSHER, CARL MOSHER. M-O-S-H-E-R. WE CONTACTED THE  
28 MEMBERS OF THE CITY COUNCIL, AND --

SUE HERFURTH, CSR #9645

469

1 Q. WHICH MEMBERS?

2 A. OH, PRACTICALLY ALL OF THEM WHO WERE IN OFFICE AT  
3 THAT TIME.

4 Q. YOU DIDN'T CONTACT ALL THESE PEOPLE YOU IDENTIFIED AT  
5 CITY HALL ALL ON THE SAME DAY, I TAKE IT, RIGHT?

6 A. WHAT?

7 Q. YOU DIDN'T CONTACT ALL THESE PEOPLE YOU IDENTIFIED AT  
8 CITY HALL ALL ON ONE DAY?

9 A. NO, SIR.

10 Q. WHO WAS THE FIRST PERSON YOU CONTACTED?

11 A. I DON'T RECALL, BUT IT COULD HAVE BEEN THE MAYOR'S  
12 OFFICE.

13 Q. WHO IN THE MAYOR'S OFFICE?

14 A. THE MAYOR.

15 Q. LET ME PUT UP GRAND JURY 6. TAKE A LOOK AT GRAND  
16 JURY EXHIBIT 6 AND SEE IF YOU CAN READ IT.

17 A. OKAY.

18 Q. DO YOU RECOGNIZE THIS LETTER?

19 A. YES, SIR.

- 20 Q. WHAT IS EXHIBIT 6?
- 21 A. EXHIBIT 6 IS A LETTER THAT I SENT TO THE MAYOR, RON
- 22 GONZALES, OUTLINING MY CONCERN ABOUT THE NEW FRANCHISE THAT
- 23 WAS GOING TO HAPPEN, THE RECYCLING AND THE GARBAGE FOR THE
- 24 CITY. AND A LETTER FROM MY OFFICE.
- 25 Q. AND ARE YOU THE PERSON WHO PREPARED THAT LETTER?
- 26 A. YES, SIR.
- 27 Q. WHEN DID YOU PREPARE THIS LETTER?
- 28 A. IT SAYS OCTOBER 3, 2000.

SUE HERFURTH, CSR #9645

470

- 1 Q. I TAKE IT YOU'RE TELLING US YOU BELIEVE YOU PREPARED
- 2 IT ON THE DATE INDICATED ON THE LETTER?
- 3 A. YES, SIR.
- 4 Q. YOU SENT THIS TO MAYOR GONZALES?
- 5 A. YES.
- 6 Q. HOW DID YOU SEND THE LETTER TO MAYOR GONZALES?
- 7 A. I FAXED IT.
- 8 Q. THAT WOULD HAVE BEEN ON OCTOBER 3?
- 9 A. YES, SIR.
- 10 Q. AND WHY DID YOU PREPARE THIS LETTER?
- 11 A. BECAUSE OF WHAT I HAVE BEEN EXPLAINING, MY CONCERN
- 12 ABOUT WHAT WAS GOING TO TAKE PLACE IN THE CITY IF MY MEMBERS
- 13 WERE NOT PROTECTED, AND I OUTLINED IN THE LETTER THAT, YOU
- 14 KNOW, I WAS AFRAID THAT MY MEMBERS MAY END UP WITHOUT A JOB.
- 15 Q. DID THE MAYOR REQUEST THAT YOU PREPARE THIS LETTER?
- 16 A. NO.
- 17 Q. WELL, LET'S LOOK AT THE LETTER FOR A MOMENT. IN THE

18 FIRST LINE OF THE LETTER YOU SAY, "DEAR MAYOR GONZALES, IN  
19 ACCORDANCE WITH YOUR REQUEST" --

20 A. OKAY --

21 Q. LET ME FINISH THE QUESTION, PLEASE. "IN ACCORDANCE  
22 WITH YOUR REQUEST, I AM EXPLAINING IN THIS LETTER IN MORE  
23 DETAIL MY CONCERNS ABOUT THE PENDING AWARD TO NORCAL WASTE  
24 SYSTEMS, INC. OF A FRANCHISE TO HANDLE GARBAGE RECYCLING  
25 COLLECTION AND PROCESSING IN THE CITY OF SAN JOSE. "

26 THAT'S YOUR WORDS, RIGHT?

27 A. YES, SIR.

28 Q. WHEN I READ THIS LETTER, I DREW THE INFERENCE THAT

SUE HERFURTH, CSR #9645

471

1 THERE MUST HAVE BEEN A PRIOR COMMUNICATION BETWEEN YOU AND THE  
2 MAYOR IN WHICH THE MAYOR REQUESTED THAT YOU PREPARE THIS  
3 LETTER.

4 A. IT COULD HAVE BEEN A CONVERSATION.

5 Q. OKAY. SO LET ME REASK THE QUESTION. WHY DID YOU  
6 PREPARE THIS LETTER?

7 A. BECAUSE I HAD COMMUNICATED WITH THE MAYOR'S OFFICE MY  
8 CONCERNS AND, YOU KNOW, HE PROBABLY ASKED ME TO SET FORTH IN  
9 WRITING WHAT MY CONCERNS WERE, AND I DID THAT.

10 Q. WHEN DID YOU HAVE THAT CONVERSATION WITH THE MAYOR?

11 A. PRIOR TO MY WRITING THE LETTER.

12 Q. WAS IT EARLIER THAT DAY, THE DAY BEFORE, THE WEEK  
13 BEFORE?

14 A. IT COULD HAVE BEEN THE WEEK BEFORE, DAYS BEFORE. I  
15 DON'T RECALL.

16 Q. THIS WAS SOMETHING, THIS WAS A BIG PROBLEM, A BIG  
17 CONCERN FOR YOU, RIGHT?

18 A. YES, IT WAS.

19 Q. DO YOU THINK IT'S LIKELY THAT YOU HAD A CONVERSATION  
20 WITH THE MAYOR IN RAISING THESE CONCERNS WHERE THE MAYOR SAID,  
21 SEND ME A LETTER OF MORE DETAIL SETTING OUT THE CONCERNS, AND  
22 YOU WOULD HAVE WAITED A WEEK TO SEND THAT LETTER?

23 A. IT DEPENDS. I TALKED TO HIM ON A FRIDAY, I HAVE TO  
24 WAIT FOR THE WEEKEND TO GO BY BEFORE I SEND THE LETTER, YOU  
25 KNOW. I COULDN'T TELL YOU EXACTLY WHEN I SPOKE TO THE MAYOR.  
26 I KNOW THAT I DID TALK TO HIM; I TALKED TO MANY PEOPLE AT CITY  
27 HALL. MY AGENTS ON A CONSTANT BASIS SPOKE TO VARIOUS PEOPLE  
28 OF THE CITY, AND SO I, YOU KNOW, TO GIVE YOU EXACT DATES,

SUE HERFURTH, CSR #9645

472

1 WHETHER IT WAS 24 HOURS BEFORE I WROTE THE LETTER OR 48 HOURS,  
2 I DON'T RECALL.

3 Q. WOULD IT BE FAIR TO SAY SHORTLY BEFORE OCTOBER 3?

4 A. PROBABLY.

5 Q. YOU HAVE TO WAIT UNTIL I FINISH.

6 A. I'M SORRY.

7 Q. THAT'S WHY YOU USED FAX INSTEAD OF MAIL, TO GET IT  
8 THERE QUICKLY, RIGHT?

9 A. YES, SIR.

10 Q. WHEN YOU SPOKE WITH THE MAYOR SHORTLY BEFORE SENDING  
11 THIS LETTER TO THE MAYOR, WHERE DID THAT CONVERSATION TAKE  
12 PLACE?

13 A. PROBABLY AT CITY HALL.

- 14 Q. WHO WAS PRESENT?
- 15 A. I DON'T RECALL.
- 16 Q. I TAKE IT THE MAYOR WAS THERE?
- 17 A. AND SOME MEMBERS OF HIS STAFF.
- 18 Q. DO YOU KNOW WHICH MEMBERS?
- 19 A. I REALLY DON'T RECALL. THERE HAVE BEEN CHANGES IN
- 20 THE CITY. THE ONLY THING I CAN TELL YOU, THERE WERE OTHER
- 21 MEMBERS OF THE STAFF.
- 22 Q. DO YOU KNOW JOE GUERRA?
- 23 A. YES, I DO.
- 24 Q. WAS HE THERE?
- 25 A. I DON'T RECALL WHETHER HE WAS THERE AT THE BEGINNING
- 26 OF THIS PROCESS OR HE CAME RIGHT AFTER, A FEW MONTHS LATER.
- 27 BUT I KNOW THAT HE DID COME IN ON THE DEAL.
- 28 Q. DID ANYONE ELSE REPRESENTING THE UNION ATTEND THIS

SUE HERFURTH, CSR #9645

473

- 1 MEETING?
- 2 A. THE PRESIDENT OF THE UNION.
- 3 Q. THAT IS MR. --
- 4 A. DAUGHERTY.
- 5 Q. ANYONE ELSE?
- 6 A. PROBABLY MAYBE EVEN JAMES FURGAS, THE OTHER BUSINESS
- 7 REPRESENTATIVE OF THE UNION.
- 8 Q. WHAT DID YOU TELL THE MAYOR AT THIS MEETING SHORTLY
- 9 BEFORE OCTOBER 3, 2000?
- 10 A. I TOLD THE MAYOR THAT I WAS CONCERNED ABOUT NORCAL
- 11 BRINGING CALIFORNIA WASTE SOLUTIONS. I TOLD HIM THAT I HAVE

12 CONCERNS WITH THIS EMPLOYER BECAUSE OF THEIR REPUTATION IN  
13 OAKLAND, THAT THEY DIDN'T HAVE SUCH A GOOD REPUTATION. I FELT  
14 THEM COMING TO SAN JOSE WAS NOT A GOOD THING, THAT WHEN THEY  
15 WERE IN OAKLAND I LEARNED FROM MY BROTHERS THERE IN LOCAL 70  
16 WHO HAD CONTRACTS WITH DAVID DUONG, AND THEY WERE NOT TOO  
17 HAPPY WITH HIM BECAUSE HE HAD PROBLEMS IN PAYING HEALTH AND  
18 WELFARE FOR WORKERS IN OAKLAND.

19 SO I HAD CONCERNS, I EXPRESSED THEM TO THE MAYOR AND  
20 EVERYBODY ELSE AT CITY HALL, THAT I DIDN'T REALLY BELIEVE THAT  
21 THIS EMPLOYER, YOU KNOW, WILL BE RESPONSIBLE IN SAN JOSE. I  
22 WAS CONCERNED ABOUT THE JOBS AND THE SECURITY OF MY MEMBERS.

23 Q. WHEN YOU SAID EVERYONE ELSE AT CITY HALL, THE  
24 CONFERENCE WE'RE TALKING ABOUT JUST INCLUDED THE MAYOR AND  
25 SOME OF HIS STAFF MEMBERS?

26 A. ON THAT PARTICULAR CONVERSATION, YES.

27 Q. I NEED TO FOCUS, BREAK IT APART.

28 A. I'M SORRY. I DID TELL HIM THAT.

SUE HERFURTH, CSR #9645

474

1 Q. NOTHING TO APOLOGIZE FOR. BUT FOR LEGAL REASONS A  
2 SUMMARY IS NOT GOING TO BE SUFFICIENT, WE NEED TO TAKE IT STEP  
3 BY STEP AND GO THROUGH THE MEETINGS, PHONE CALLS,  
4 COMMUNICATIONS.

5 I KNOW IF YOU'RE A MAN OF ACTION IT SEEMS VERY  
6 LABORIOUS AND TEDI OUS, SO PLEASE BEAR WITH US. WHAT DID THE  
7 MAYOR SAY TO YOU IN RESPONSE TO YOUR CONCERNS?

8 A. HE TOLD ME THAT --

9 Q. I'M TALKING ABOUT AT THIS OCCASION.

10 A. HE HAD EXPRESSED CONCERN THAT -- YOU KNOW, MY OPINION  
11 WAS THAT HE CONSIDERED THIS TO BE A LABOR ISSUE THAT SHOULD BE  
12 SETTLED BETWEEN THE UNIONS. THAT, YOU KNOW, THE LONGSHOREMEN  
13 WAS A UNION AND THE TEAMSTERS WAS ANOTHER UNION, AND, YOU  
14 KNOW, WE SHOULD DETERMINE AS TO HOW THIS WAS GOING TO BE  
15 DISPOSED OF BECAUSE THE CITY WAS GOING TO PUT OUT THE CONTRACT  
16 AND GET THE BEST DEAL THEY COULD WITH THE VENDORS. AND MY  
17 IMPRESSION WAS THAT HE FELT THAT THE UNION, THAT THE  
18 LONGSHOREMEN IS A UNION AND SO ARE YOU, SO YOU MORE OR LESS  
19 HAVE TO DECIDE WHO HAS GOT THE JURISDICTION IN THIS CASE.

20 Q. AND NOW I TAKE IT YOU SOUGHT OUT THIS MEETING WITH  
21 THE MAYOR TO ENLIST HIS HELP ON YOUR ISSUE?

22 A. YES, SIR.

23 Q. WHY DID YOU THINK THE MAYOR WOULD HELP YOU ON THIS  
24 ISSUE?

25 A. BECAUSE I DEAL WITH MANY CITIES, AND THIS IS NOT THE  
26 ONLY CITY WHERE I GO TO THE MAYOR, I ALWAYS GO TO THE MAYOR  
27 WHENEVER THERE IS PROBLEMS. ALL OF THE FRANCHISES FOR THE  
28 GARBAGE COLLECTION IS CONNECTED TO CITY HALL. THE MAYOR, CITY

SUE HERFURTH, CSR #9645

475

1 COUNCIL, AND BOARD OF SUPERVISORS ARE REALLY THE PEOPLE IN  
2 CHARGE. I ALWAYS GET THE IMPRESSION THAT THE REAL EMPLOYER IS  
3 THE CITIES, BECAUSE THEY ARE THE ONES WHO DECIDE WHO IS GOING  
4 TO GET THE CONTRACT.

5 SO MY FIRST RESPONSIBILITY IS TO CONTACT OUR FRIENDS  
6 IN CITY HALL, COUNCIL PEOPLE, THE MAYOR'S OFFICE FIRST BECAUSE  
7 OF THE MAYOR'S AUTHORITY. I DID THAT IN SAN FRANCISCO WITH

8 MAYOR NEWSOME, I DID THAT WITH WILLY BROWN. I DO THAT WITH  
9 ALL CITIES. IT'S NOT UNUSUAL IN SAN JOSE TO DO ANYTHING  
10 DIFFERENT.

11 Q. WAS MAYOR RON GONZALES ONE OF YOUR FRIENDS AT CITY  
12 HALL?

13 A. HE HAS BEEN A GOOD FRIEND.

14 Q. WHY DO YOU SAY THAT?

15 A. WELL, I MEAN, I WILL SAY WE HAVE A GOOD RELATIONSHIP.  
16 I MET HIM WHEN HE WAS IN SUNNYVALE. HE WAS A MAYOR OF  
17 SUNNYVALE, AND I KNEW HIS FATHER VERY WELL. HIS FATHER USED  
18 TO BE A FORMER MEMBER OF THE TEAMSTERS LOCAL 85, AND SO I  
19 ALWAYS FELT THAT -- AND ALSO, IT HELPED THAT HE WAS A  
20 DEMOCRAT. I ALWAYS TRY TO SEEK THE DEMOCRATS OUT.

21 Q. DID THE LONGSHOREMEN LOCAL 6 HAVE MUCH POLITICAL  
22 CLOUT IN SAN JOSE?

23 A. I WILL SAY THAT THE LONGSHOREMEN HAVE AS MUCH CLOUT  
24 AS I DO IN SOME CASES, MAYBE EVEN MORE.

25 Q. IN SAN JOSE?

26 A. IN EVERY CITY.

27 Q. I'M ASKING ABOUT SAN JOSE.

28 A. YOU HAVE TO ASK THAT.

SUE HERFURTH, CSR #9645

476

1 Q. DID YOU THINK, AT THE TIME YOU TALKED TO THE MAYOR  
2 ABOUT THIS PROBLEM IN 2000, THAT THE MAYOR WOULD WANT THE  
3 SUPPORT OF THE TEAMSTERS IN A 2002 REELECTION CAMPAIGN?

4 A. NO, I DID NOT. AS A MATTER OF FACT, I DON'T KNOW IF  
5 IT WAS THIS MEETING OR ANOTHER MEETING WHERE I LEFT HIS OFFICE

6 KIND OF WORRIED. WHEN HE EXPRESSED TO ME, HEY, LOOK, YOU  
7 KNOW, THIS IS A LABOR ISSUE. YOU HAVE TWO UNIONS INVOLVED,  
8 YOU' RE GOING TO HAVE TO DECIDE. BETWEEN THE TWO OF YOU, YOU  
9 HAVE TO DECIDE WHO HAS THE RESPONSIBILITY TO REPRESENT THESE  
10 PEOPLE.

11 HE SAID THERE IS LABOR PEACE IN THE RFP, THERE IS  
12 RETENTION OF EMPLOYEES, AND HE GOES, YOU KNOW, SO THE CITY IS  
13 GOING TO DO WHATEVER WE CAN TO ENFORCE THAT. BUT I DIDN'T GET  
14 THE IMPRESSION WHEN I LEFT AFTER TALKING TO HIM THAT HE WAS  
15 CONCERNED ABOUT THE TEAMSTERS. AND ONE THING WE DO IN OUR  
16 LOCAL UNION IS THAT WE DO NOT TRY TO PUSH THE ISSUE OF THE  
17 UNION ON THESE RFPS BECAUSE WE KNOW THAT IS NOT PROPER FOR US  
18 TO GO THERE AND SAY, YES, WE WANT THE RFP TO SAY IT HAS  
19 TEAMSTERS TO REPRESENT THE CITY; WE CANNOT DO THAT.

20 Q. THE QUESTION IS MORE NARROW THAN YOUR ANSWER, I  
21 THINK. DID YOU BELIEVE THAT THE MAYOR, IF HE RAN FOR  
22 REELECTION IN 2002, HE WOULD ASK FOR YOUR POLITICAL SUPPORT?

23 A. I WOULD HOPE SO.

24 Q. OKAY. DID YOU BELIEVE THAT IF THE MAYOR DECIDED TO  
25 RUN FOR HIGHER OFFICE, HE WOULD ASK FOR YOUR SUPPORT?

26 A. I THINK SO.

27 Q. OKAY. THAT'S ALL THAT QUESTION ASKED.

28 A. OKAY. HE PROBABLY ASKED THE LONGSHOREMEN FOR THE

SUE HERFURTH, CSR #9645

477

1 SAME SUPPORT.

2 Q. HOW WOULD YOU DESCRIBE YOUR RELATIONSHIP WITH MAYOR  
3 GONZALES?

- 4 A. IT'S A DISTANT, GOOD WORKING RELATIONSHIP.
- 5 Q. WHAT DOES THAT MEAN?
- 6 A. IT MEANS THAT WHENEVER WE HAVE ASKED TO MEET WITH HIM  
7 AND EXPRESS OUR CONCERNS ABOUT THE JOBS, THAT HE HAS ALWAYS  
8 HAD AN OPEN DOOR POLICY.
- 9 Q. HOW LONG HAVE YOU KNOWN THE MAYOR?
- 10 A. APPROXIMATELY MAYBE 15, 20 YEARS.
- 11 Q. HAVE YOU OR THE TEAMSTERS CONTRIBUTED TO ANY OF THE  
12 MAYOR'S CAMPAIGNS?
- 13 A. I DIDN'T HEAR.
- 14 Q. HAD YOU OR THE TEAMSTERS CONTRIBUTED TO ANY OF THE  
15 MAYOR'S CAMPAIGNS PRIOR TO 2000?
- 16 A. I THINK SO. NOT ME PERSONALLY, BUT --
- 17 Q. THE UNION --
- 18 A. YES, THE UNIONS.
- 19 Q. WOULD THAT INCLUDE THE INDIVIDUAL MEMBERS OF THE  
20 UNION, OR JUST THE UNION AS A WHOLE?
- 21 A. I WOULD SAY THAT THE LOCAL 350, BUT WE HAVE A PAC IN  
22 THE INTERNATIONAL UNION. WE ALSO HAVE ONE IN THE STATE WITH  
23 THE EXCEPTION OF MAYBE ONCE OR TWICE LOCAL 350 DIRECTLY MADE A  
24 CONTRIBUTION, BUT, YOU KNOW, WE ALSO HAVE OTHER LOCAL UNIONS  
25 IN THE AREA.
- 26 Q. THERE IS NOTHING WRONG WITH MAKING A CONTRIBUTION; I  
27 JUST WANT TO FIND OUT WHAT HAPPENED.
- 28 A. I'M TRYING TO GIVE YOU AN EXACT ANSWER.

SUE HERFURTH, CSR #9645

478

- 1 Q. DID YOU OR THE TEAMSTERS CONTRIBUTE TO THE MAYOR'S

- 2 OFFICEHOLDER ACCOUNT?
- 3 A. ME PERSONALLY, NO. THE LOCAL, PROBABLY YES.
- 4 Q. HAVE YOU OR THE TEAMSTERS WORKED ON THE MAYOR'S
- 5 ELECTION CAMPAIGNS?
- 6 A. YES, WE HAVE.
- 7 Q. HAVE YOU OR THE TEAMSTERS WALKED PRECINCTS WITH THE
- 8 MAYOR?
- 9 A. YES, SIR.
- 10 Q. HAVE YOU EVER HAD LUNCH WITH THE MAYOR?
- 11 A. LET ME THINK. PROBABLY ONCE OR TWICE, I DON'T RECALL
- 12 THE DATE, WHETHER IT WAS ON THE DAYS WE'RE COVERING HERE
- 13 TODAY, BUT ONCE OR TWICE.
- 14 Q. IT WOULD HAVE BEEN PRIOR TO 2004?
- 15 A. I DON'T EXACTLY RECALL, BUT I KNOW MAYBE ONCE OR
- 16 TWICE IN OUR RELATIONSHIP.
- 17 Q. HAVE YOU EVER HAD DINNER WITH THE MAYOR?
- 18 A. I MAY HAVE HAD DINNER WITH HIM AND MY AGENTS ONCE.
- 19 Q. DO YOU KNOW THE MAYOR'S HOME TELEPHONE NUMBER?
- 20 A. NO, I DO NOT, BUT I'M TRYING TO LOOK FOR IT.
- 21 Q. HAVE YOU EVER BEEN IN THE MAYOR'S HOME?
- 22 A. NEVER.
- 23 Q. HAS HE EVER BEEN TO YOUR HOME?
- 24 A. NEVER.
- 25 Q. DID TEAMSTERS LOCAL 350 HOLD A RECEPTION AND BARBECUE
- 26 FOR TEAMSTER PRESIDENT JAMES HOFFA, JR. ?
- 27 A. NO.
- 28 Q. DID NOT?

SUE HERFURTH, CSR #9645

1 A. NO.

2 MR. FINKELSTEIN: LET'S MARK AN EXHIBIT. I WOULD  
3 LIKE TO HAVE MARKED AS EXHIBIT 64 AN ENTRY IN MAYOR GONZALES'S  
4 CALENDAR FOR AUGUST 22, 2000.

5 THE FOREMAN: SO MARKED.

6 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
7 JURY EXHIBIT 64.)

8 BY MR. FINKELSTEIN:

9 Q. MR. MORALES, LET ME SHOW YOU EXHIBIT 64 AND REPRESENT  
10 TO YOU THAT THIS IS AN ENTRY THAT WAS FOUND IN AN OUTLOOK  
11 CALENDAR APPARENTLY USED BY MAYOR GONZALES.

12 LET ME SEE IF I CAN -- AND YOU SEE THAT ON THE  
13 SUBJECT LINE THE ITEM IS DESCRIBED AS "DROP BY TEAMSTERS LOCAL  
14 287."

15 A. YES, BUT YOU ASKED ME LOCAL 350, THAT'S A DIFFERENT  
16 LOCAL.

17 Q. WHAT'S LOCAL 287?

18 A. LOCAL 287 IS TEAMSTERS LOCAL UNION HERE IN SAN JOSE  
19 AT 1452 NORTH FOURTH STREET, SAN JOSE.

20 Q. AS INDICATED ON THE CALENDAR ENTRY?

21 A. YES.

22 Q. WHO DO THEY REPRESENT?

23 A. THEY REPRESENT TRUCK DRIVERS, UPS, BEER DELIVERY.

24 Q. DID YOU ATTEND THIS EVENT?

25 A. UH -- PROBABLY YES.

26 Q. DID THE MAYOR ATTEND THE EVENT?

27 A. I DON'T RECALL, BUT IF HE WAS, YOU KNOW, A  
28 POLITICIAN, HE SHOULD ATTEND IT.

1           INCIDENTALLY, THAT CELL PHONE THAT INDICATES IS  
2 THERE FOR ME, I HAVE NEVER SEEN THAT PHONE NUMBER IN MY LIFE.  
3 MORALES CELL PHONE.

4           Q.       I UNDERSTAND THAT YOU TOLD US NOW THAT THIS IS BEING  
5 PUT ON BY LOCAL 287, A DIFFERENT LOCAL THAN YOUR UNION, RIGHT?

6           A.       YES, SIR.

7           Q.       AND DO YOU KNOW WHY ON THIS CALENDAR ENTRY YOUR NAME  
8 APPEARS AS THE CONTACT PERSON?

9           A.       BECAUSE I MORE LIKELY CALLED HIS OFFICE AT THE  
10 REQUEST OF 287 TO FIND OUT IF THE MAYOR WAS GOING TO ATTEND,  
11 AND MY RECOLLECTION IS THAT WE ALSO CONTACTED OTHER MEMBERS OF  
12 THE CITY COUNCIL, STATE ASSEMBLY, AND SENATORS TO BE THERE.

13          Q.       I UNDERSTAND NOW YOU SAID SOMETHING ABOUT THE CELL  
14 PHONE NUMBER?

15          A.       YEAH. I DON'T RECALL THAT BEING A PHONE OF MINE.

16          Q.       ARE YOU SAYING IT'S YOUR, NOT YOUR PHONE, OR YOU  
17 DON'T REMEMBER?

18          A.       I DON'T RECALL HAVING THAT NUMBER.

19          Q.       OKAY. NOW, THERE'S A REFERENCE TO MORALES  
20 APPRECIATING A QUICK RON MEET AND GREET. DO YOU SEE THAT?

21          A.       YES.

22          Q.       DO YOU KNOW WHAT THAT REFERS TO?

23          A.       IT REFERS TO PROBABLY TALKING TO SOMEBODY ON THE  
24 STAFF SAYING THAT, YOU KNOW, RON DOESN'T HAVE TOO MUCH TIME,  
25 MAYBE HE WILL JUST COME IN, GREET THE PEOPLE AND LEAVE. JUST  
26 SHAKE HANDS AND LEAVE.

27          Q.       IS THE REASON THAT LOCAL 287 ASKED YOU TO BE THE  
28 GO-BETWEEN WITH THE MAYOR BECAUSE YOUR MEMBERS WORK FOR

1 COMPANIES THAT HAVE CONTRACTS WITH CITY, AND 287 WORKS FOR  
2 EMPLOYERS WHO DON'T HAVE A LOT OF BUSINESS WITH THE CITY?

3 A. LOCAL 287 ALSO REPRESENTS PEOPLE AT THE CONVENTION  
4 CENTER, SO THEY COULD ASK ME TO DO THAT FOR THEM, AND I DID.

5 Q. WHY DIDN'T THEY CONTACT THE MAYOR DIRECTLY; WHY DID  
6 THEY ASK YOU TO CONTACT HIM?

7 A. I COULDN'T ANSWER YOU WHY.

8 Q. DID YOU MAKE THE CONTACT?

9 A. YES.

10 Q. DID THE EVENT TAKE PLACE?

11 A. YES, IT DID.

12 Q. AND WAS JAMES HOFFA, JR. THERE?

13 A. YES. TO MY RECOLLECTION, YES.

14 Q. DO YOU RECALL IT BEING ON OR ABOUT AUGUST 27, 2000?

15 A. YEAH. WHAT I REMEMBER WAS THAT IT WAS A QUICK THING,  
16 NOT A BIG EVENT. IT WAS LIKE A RECEPTION AND BARBECUE, YOU  
17 KNOW, LESS THAN ONE OR TWO HOURS.

18 Q. YOU ARE THE PERSON WHO INVITED THE MAYOR TO THIS  
19 EVENT?

20 A. YES.

21 Q. LET ME ASK YOU THIS: HOW DID YOU KEEP TRACK OF YOUR  
22 MEETINGS AND APPOINTMENTS IN THE YEAR 2000?

23 A. I PROBABLY WROTE THEM IN THE CALENDAR.

24 Q. AND YOU LOOKED FOR A CALENDAR IN RESPONSE TO THE  
25 SUBPOENA YOU RECEIVED?

26 A. TO BE HONEST WITH YOU, WHEN I FINISHED THE YEAR I  
27 TOSSED THE CALENDAR AWAY.

28 Q. SO HAVE YOU LOOKED FOR THE CALENDAR?

SUE HERFURTH, CSR #9645

482

1 A. YES, SIR, I DID.

2 Q. YOU COULDN'T FIND IT?

3 A. (SHAKING HEAD NEGATIVELY.)

4 Q. IS THIS A PAPER CALENDAR OR BOOK OF SOME KIND?

5 A. IT'S A SIZEABLE CALENDAR.

6 Q. DOES IT RECORD PHONE NUMBERS AND CONTACT INFORMATION,  
7 OR JUST DATES?

8 A. JUST RECORDS LIKE TODAY, YOU KNOW, GRAND JURY  
9 APPEARANCE. THAT'S ALL.

10 Q. DID YOU USE E-MAIL IN THE YEAR 2000?

11 A. BEG YOUR PARDON?

12 Q. DID YOU USE E-MAIL IN THE YEAR 2000?

13 A. I'M EMBARRASSED TO TELL YOU EVEN IN THE YEAR 2006 I  
14 DON'T USE E-MAIL, I USE FAX MACHINES.

15 Q. DOES THE UNION OFFICE USE E-MAIL?

16 A. THEY DO.

17 Q. DID YOU RECEIVE A SUBPOENA DIRECTED TO YOUR UNION FOR  
18 VARIOUS DOCUMENTS AND MATERIALS RELATED TO THIS INVESTIGATION  
19 SEVERAL WEEKS AGO?

20 A. YES, WE DID.

21 Q. YOU PERSONALLY RECEIVED A SUBPOENA AS WELL?

22 A. YES, SIR.

23 Q. HAS ANYONE LOOKED AT THE OFFICE, UNION OFFICE  
24 COMPUTERS TO SEE IF THERE ARE ANY E-MAILS OR CALENDAR ENTRIES  
25 THAT WOULD BE RESPONSIVE TO THE SUBPOENAS THAT WERE SERVED?

- 26 A. YES, SIR, THEY DID.  
27 Q. WHO DID THE SEARCHES?  
28 A. LARRY DAUGHERTY DID, THE PRESIDENT OF THE UNION.

SUE HERFURTH, CSR #9645

483

- 1 Q. HAS ANYTHING BEEN FOUND?  
2 A. NO, SIR.  
3 Q. DID YOU SPEAK TO NORCAL ABOUT THE TEAMSTERS  
4 REPRESENTING CWS' S MRF WORKERS IN SAN JOSE?  
5 A. YES, I DID.  
6 Q. WHEN WAS THE FIRST TIME THAT YOU SPOKE TO NORCAL  
7 ABOUT THE TEAMSTERS REPRESENTING CWS MRF WORKERS IN SAN JOSE?  
8 A. WHEN I FOUND OUT THAT THEY HAD BEEN INVITED TO  
9 PARTICIPATE IN THE CONTRACT FOR THE CITY.  
10 Q. LET ME ASK YOU THIS: WE SAW THAT YOU SENT THIS  
11 FAXED-IN LETTER TO THE MAYOR ON OCTOBER 3, 2000, CORRECT?  
12 A. YES, SIR.  
13 Q. AND THAT SHORTLY BEFORE THAT TIME YOU HAD A MEETING  
14 AT CITY HALL WITH THE MAYOR, CORRECT?  
15 A. YES, SIR.  
16 Q. WAS YOUR FIRST CONTACT WITH NORCAL BEFORE OR AFTER  
17 YOUR FIRST CONTACT WITH THE MAYOR?  
18 A. BEFORE.  
19 Q. OKAY. HOW MUCH BEFORE?  
20 A. I DON' T RECALL.  
21 Q. AND WAS IT FACE-TO-FACE OR BY PHONE?  
22 A. I AM A VERY INSISTENT INDIVIDUAL. I MEAN, I GET  
23 AHOLD OF THEM VERY OFTEN.

24 Q. WHERE DID THE CONVERSATION TAKE PLACE?

25 A. IT COULD HAVE TAKEN PLACE IN SAN FRANCISCO, COULD  
26 HAVE TAKEN PLACE IN SOUTH SAN FRANCISCO OR LOS ALTOS. AS I  
27 TOLD YOU BEFORE, NORCAL REPRESENTS VARIOUS COMPANIES AND IT  
28 COULD HAVE BEEN AT THE LABOR -- AT THE CITY COUNCIL QUARTERS

SUE HERFURTH, CSR #9645

484

1 HERE IN THE CITY.

2 Q. IS YOUR ANSWER SIMPLY I DON'T REMEMBER?

3 A. YEAH.

4 Q. THAT'S FINE. THAT'S ALL YOU HAVE TO SAY. I'LL MOVE  
5 ON TO THE NEXT QUESTION.

6 WE HAVE BEEN GOING ABOUT AN HOUR. WE WOULD LIKE TO  
7 GIVE THE REPORTER SOME BREAKS, SO WHY DON'T WE TAKE A  
8 10-MINUTE BREAK.

9 THE FOREMAN: WE WILL RECESS FOR 10 MINUTES. LET ME  
10 READ YOU AN ADMONITION OF CONFIDENTIALITY.

11 YOU ARE ADMONISHED NOT TO REVEAL TO ANY PERSON,  
12 EXCEPT AS DIRECTED BY THE COURT, WHAT QUESTIONS WERE ASKED OR  
13 WHAT RESPONSES WERE GIVEN, OR ANY OTHER MATTERS CONCERNING THE  
14 NATURE OR SUBJECT OF THE GRAND JURY'S INVESTIGATION WHICH YOU  
15 LEARNED DURING YOUR APPEARANCE BEFORE THE GRAND JURY, UNLESS  
16 AND UNTIL SUCH TIME AS THE TRANSCRIPT OF THIS GRAND JURY  
17 PROCEEDING IS MADE PUBLIC. VIOLATION OF THIS ADMONITION IS  
18 PUNISHABLE AS CONTEMPT OF COURT.

19 DO YOU UNDERSTAND THAT?

20 THE WITNESS: YES, SIR.

21 MR. FINKELSTEIN: MR. MORALES, SEE YOU IN ABOUT 10

22 MINUTES.

23 (A BRIEF RECESS WAS TAKEN.)

24 THE FOREMAN: I WOULD LIKE TO BRING TO

25 MR. FINKELSTEIN'S ATTENTION THAT DURING THE BREAK, JUROR (NAME

26 REDACTED) INFORMED ME THAT HE HAD BEEN A MEMBER OF LOCAL 287

27 OF THE TEAMSTERS BEFORE RETIRING.

28 HE DOES NOT BELIEVE THAT THAT CONSTITUTES A PROBLEM

SUE HERFURTH, CSR #9645

485

1 FOR HIS IMPARTIALITY OR OBJECTIVITY, BUT HE DID WANT TO

2 DISCLOSE THAT TO YOU.

3 MR. FINKELSTEIN: THANK YOU. PERHAPS YOU COULD

4 INQUIRE OF THE JUROR ON THE RECORD NOW.

5 THE FOREMAN: OKAY. MR. (NAME REDACTED), WOULD YOU

6 TELL US WHAT YOUR BACKGROUND RELATIONSHIP IS WITH LOCAL 287?

7 A JUROR: I WAS A MEMBER OF LOCAL 287 FOR 43 YEARS;

8 I RETIRED FROM LOCAL 287 ON LABOR DAY OF 2002.

9 I WAS NOT AT THIS MEETING; AS A MATTER OF FACT, I

10 WAS NOT A SUPPORTER OF JIMMY HOFFA, BUT I WAS NOT AT THE

11 BARBECUE. I DON'T KNOW MR. MORALES, I DIDN'T KNOW HIM BEFORE

12 THIS SITUATION CAME UP PERSONALLY, AND I HAVE DISCUSSED THIS

13 BEFORE WE EVER GOT HERE AND DISCLOSED IT TO THE FOREMAN. I

14 DIDN'T THINK I WOULD BE AFFECTED BY THIS.

15 MR. FINKELSTEIN: THAT'S A KEY ISSUE. GIVEN YOUR

16 FORMER EMPLOYMENT AND REPRESENTATION BY A DIFFERENT TEAMSTER

17 LOCAL, YOU BELIEVE THAT YOU CAN BE FAIR AND IMPARTIAL IN THIS

18 MATTER?

19 A JUROR: OH, ABSOLUTELY.

20 MR. FINKELSTEIN: I THINK THAT'S FINE.

21 A JUROR: I JUST WANT IT ON THE RECORD I DID BELONG  
22 TO LOCAL 287.

23 MR. FINKELSTEIN: THANK YOU FOR MAKING THAT  
24 DISCLOSURE.

25 WHY DON'T WE ASK MR. MORALES TO STEP BACK INSIDE.

26 BY MR. FINKELSTEIN:

27 Q. MR. MORALES, I'LL JUST REMIND YOU YOU'RE STILL UNDER  
28 OATH, HAVING BEEN PREVIOUSLY SWORN IN THIS MATTER.

SUE HERFURTH, CSR #9645

486

1 WHEN WE BROKE, WE STARTED TO INQUIRE ABOUT EFFORTS  
2 YOU MAY HAVE MADE WITH NORCAL TO DEAL WITH THIS PROBLEM.

3 A. YES, SIR.

4 Q. LET ME DIGRESS FOR A MOMENT. YOU KNEW THAT THERE WAS  
5 A CITY COUNCIL VOTE COMING UP LATER IN OCTOBER OF 2000  
6 CONCERNING THE SELECTION OF VENDORS TO DO RECYCLE PLUS  
7 SERVICES, CORRECT?

8 A. PROBABLY.

9 Q. OKAY. AND DO YOU RECALL THAT IN ADVANCE OF THE VOTE  
10 THE ENVIRONMENTAL SERVICES DEPARTMENT ISSUED ITS REPORT  
11 RECOMMENDING WHICH OF THE VENDORS SHOULD BE SELECTED?

12 A. YES. THAT WAS MY UNDERSTANDING.

13 Q. DID YOU HAVE ACCESS TO THAT REPORT BEFORE THAT  
14 COUNCIL MEETING?

15 A. I DON'T RECALL THAT.

16 Q. DO YOU RECALL WHETHER OR NOT YOU LEARNED SOMEHOW THAT  
17 NORCAL WAS GOING TO BE ONE OF THE VENDORS RECOMMENDED BY THE

18 ENVIRONMENTAL SERVICES DEPARTMENT TO BE SELECTED BY THE  
19 COUNCIL?

20 A. PROBABLY. THERE WAS A TIME THAT I KNEW THEY WERE  
21 GOING TO BE RECOMMENDING THEM.

22 Q. THAT WAS BEFORE THE COUNCIL MEETING?

23 A. IT WAS BEFORE A COUNCIL MEETING.

24 Q. AND WOULD THAT HAVE BEEN WHAT PROMPTED YOU TO START  
25 CONTACTING VARIOUS PEOPLE ABOUT THIS PROBLEM?

26 A. NO, SIR.

27 Q. WELL, DID YOU CONTACT -- STRIKE THAT. WAS NORCAL THE  
28 ONLY PROPOSER THAT WAS GOING TO USE LONGSHOREMEN FOR THE

SUE HERFURTH, CSR #9645

487

1 SAN JOSE MRF WORKERS?

2 A. YES. THAT WAS MY UNDERSTANDING.

3 Q. AND GREEN TEAM WAS AN EXISTING CONTRACTOR AND WOULD  
4 HAVE CONTINUED TO USE CARPENTERS, RIGHT?

5 A. YES.

6 Q. SO THE ONLY PROPOSER THAT PRESENTED ANY KIND OF UNION  
7 ISSUE FOR YOU WAS NORCAL?

8 A. IT COULD HAVE BEEN. I DON'T RECALL WHO ELSE BID FOR  
9 IT, BUT, YOU KNOW, THERE ARE OTHER VENDORS WHO ARE NONUNION,  
10 SO IT COULD HAVE BEEN SOME OTHER PEOPLE THAT DID NOT HAVE  
11 UNION CONTRACTS WITH NOBODY.

12 Q. YOU TOLD US, I THINK, THAT YOU DID SPEAK WITH NORCAL  
13 ABOUT THIS PROBLEM, CORRECT?

14 A. YES, SIR.

15 Q. WOULD THAT HAVE BEEN CLOSE IN TIME TO THIS OCTOBER 3

16 LETTER TO THE MAYOR?

17 A. PROBABLY, YES.

18 Q. I THINK YOU TOLD US YOU TALKED TO MR. SANGIACOMO,  
19 AMONG OTHERS, ABOUT THIS PROBLEM?

20 A. YES.

21 Q. AND YOUR PROBLEM WAS ACTUALLY WITH CWS, NOT NORCAL,  
22 CORRECT?

23 A. NO. MY OPINION AND MY POSITION WAS THAT IT WAS  
24 NORCAL, THE ONE WHO WAS RESPONSIBLE FOR THE ENTIRE FRANCHISE,  
25 THAT THE DEBATE THEY WERE ABOUT TO GET -- EVEN TODAY MY  
26 POSITION IS THAT IF NORCAL, THE RESPONSIBLE PARTY, WAS BIDDING  
27 FOR THE CONTRACT, THE ONLY DIFFERENCE IN THE PROPOSAL WAS THAT  
28 THEY BROUGHT ANOTHER VENDOR AS SUBCONTRACTOR. BUT THE SOLE

SUE HERFURTH, CSR #9645

488

1 RESPONSIBILITY FOR THE ENTIRE FRANCHISE WITH THE CITY OF  
2 SAN JOSE WAS, IN MY OPINION, WITH NORCAL, WAS NORCAL.

3 Q. THAT'S WHY YOU TALKED TO NORCAL?

4 A. YES.

5 Q. WHAT DID YOU TELL NORCAL?

6 A. I TOLD NORCAL THAT I WAS CONCERNED THAT THEY WERE  
7 BRINGING A VENDOR FROM OAKLAND, AND THAT I WAS WORRIED BECAUSE  
8 OF THE WAGES THAT THEY PAID IN OAKLAND, AND ALSO I WAS  
9 CONCERNED ABOUT MY JOBS; I EXPRESSED TO HIM THAT MY MEMBERS  
10 HAD THE RIGHT TO JOBS AND THAT I WANTED NOT ONLY FOR THEM TO  
11 GET THE JOB, BUT ALSO NOT TO LOSE OVER THREE DOLLARS AN HOUR  
12 ON THE WAGES AND BENEFITS BECAUSE NORCAL HAD DECIDED TO BRING  
13 ANOTHER VENDOR.

14 I ALSO EXPRESSED MY CONCERN TO NORCAL THAT, BASED ON  
15 THE REPUTATION OF CWS, AS I STATED EARLIER, THAT I DIDN'T  
16 REALLY BELIEVE THAT THEY BELONG IN THE CITY OF SAN JOSE, THAT  
17 THEIR REPUTATION WAS NOT GOOD, AND I ALWAYS FELT THAT CWS WAS  
18 LIKE A SMALL COMPANY IN OAKLAND WHERE PEOPLE LINE UP WITH  
19 SAFEWAY CARTS, THEY LINE UP. I ALWAYS, MY IMAGINATION WAS  
20 THAT EVEN THOUGH I KNEW THAT THEY ALSO HAD A CONTRACT WITH THE  
21 CITY OF OAKLAND THAT THEY WERE LIKE A SMALL --

22 Q. OPERATOR?

23 A. OPERATOR. AND CITY OF SAN JOSE BEING SUCH A BIG  
24 CITY, THAT HE COULD HAVE HAD ALL THE GOOD INTENTIONS IN THE  
25 WORLD, BUT IN MY OPINION AT THAT TIME I DIDN'T BELIEVE THAT  
26 THEY WERE GOING TO FULFILL THEIR OBLIGATIONS TO THE CITY.

27 Q. WHAT DID NORCAL SAY BACK IN RESPONSE?

28 A. WELL, IN NO UNCERTAIN WORDS THEY TOLD ME, MIND MY OWN

SUE HERFURTH, CSR #9645

489

1 BUSINESS. THEY WERE GOING TO DO THEIR BUSINESS, AND THEY WERE  
2 GOING TO COMPLY WITH THE CONTRACT, BUT THEY INSISTED THAT THEY  
3 HAD THEIR OWN UNION.

4 THEY SAID, THE WAY IT CAME ACROSS TO ME AT THE  
5 MEETING WAS THEY WERE GOING TO IMPORT THEIR WORKERS. WORKERS  
6 FOR CWS IN OAKLAND WERE GOING TO COME TO SAN JOSE AND DO THE  
7 WORK.

8 Q. WHO GAVE YOU THAT IMPRESSION AT NORCAL?

9 A. EVERYONE THAT I TALKED TO ON THE CORPORATION SIDE.

10 Q. SO CAN YOU NAME SOME NAMES?

11 A. I THINK I DID THAT BEFORE, BUT I'LL DO IT AGAIN.

12 ARCHIE HUMPHREY. MICHAEL SANGIACOMO, BILL JONES, WHO WERE  
13 MORE OR LESS IN CHARGE OF DOING THE BIDDING. THERE WERE OTHER  
14 PEOPLE I TALKED TO AND EXPRESSED MY CONCERN, I SOUNDED LIKE A  
15 BROKEN RECORD. I JUST TOLD EVERYBODY THAT WOULD LISTEN WHAT  
16 MY CONCERNS WERE.

17 Q. THIS CONVERSATION TOOK PLACE BEFORE THE CITY  
18 COUNCIL'S FIRST VOTE SELECTING A VENDOR?

19 A. WHICH CONVERSATION?

20 Q. THE ONE YOU JUST DESCRIBED.

21 A. I TOLD YOU I HAD MANY CONVERSATIONS.

22 Q. I WANT TO FOCUS ON THE CONVERSATIONS PRIOR TO THE  
23 CITY COUNCIL'S FIRST VOTE ON THE VENDORS.

24 A. I HAD MANY CONVERSATIONS.

25 Q. DID YOU HAVE ANY BEFORE THE COUNCIL VOTED?

26 A. YES.

27 Q. AND IN CONVERSATIONS THAT YOU HAD WITH NORCAL BEFORE  
28 THE COUNCIL VOTED, DID YOU RAISE THESE CONCERNS YOU TOLD US

SUE HERFURTH, CSR #9645

490

1 ABOUT?

2 A. I DID BEFORE THEY GOT IT --

3 Q. I'M ONLY INTERESTED IN BEFORE, FIRST BEFORE.

4 A. IT WAS BEFORE, DURING, AND AFTER.

5 Q. NOW, LET'S PUT DURING AND AFTER ASIDE AND LETS LOOK  
6 AT BEFORE. YOU HAD CONVERSATIONS WITH REPRESENTATIVES AT  
7 NORCAL BEFORE THE COUNCIL'S FIRST VOTE ON THE CONTRACTS?

8 A. YES.

9 Q. DID YOU RAISE THESE CONCERNS YOU TOLD US ABOUT IN

10 THOSE CONVERSATIONS?

11 A. YES, SIR.

12 Q. WHAT DID NORCAL TELL YOU IN THOSE CONVERSATIONS?

13 A. THAT IT WAS THEIR UNDERSTANDING THAT CWS HAD A  
14 CONTRACT WITH THE LONGSHOREMEN AND THAT THEY WERE GOING TO DO  
15 THE WORK FOR THE MRF AND THAT, YOU KNOW, THEY WOULD TRY TO  
16 HELP OUR WORKERS TO SECURE JOBS WITH THEM, BUT, YOU KNOW,  
17 KNOWING CORPORATIONS, I GOT THE IMPRESSION THAT THEY HAD PLANS  
18 TO BRING PEOPLE FROM OVER THERE TO HERE.

19 Q. YOU WERE CONCERNED ABOUT THE EXISTING MRF WORKERS NOT  
20 FINDING EMPLOYMENT WITH THE NEW CONTRACTOR?

21 A. CORRECT.

22 Q. YOU WERE CONCERNED ABOUT THEM RECEIVING LOWER WAGES  
23 AND BENEFITS THAN THEY HAD BEEN RECEIVING?

24 A. YES.

25 Q. AND YOU WERE CONCERNED ABOUT THEM NO LONGER BEING  
26 REPRESENTED BY THE TEAMSTERS?

27 A. THAT'S CORRECT.

28 Q. AT ANY OF THE MEETINGS THAT YOU HAD WITH NORCAL

SUE HERFURTH, CSR #9645

491

1 BEFORE THE COUNCIL'S FIRST VOTE, SELECTION OF A CONTRACTOR,  
2 DID YOU EVER SUGGEST TO ANY OF THE REPRESENTATIVES OF NORCAL  
3 THAT IF CWS DID NOT USE TEAMSTERS AT ITS NEW RECYCLING  
4 FACILITY IN SAN JOSE, NORCAL WOULD NOT GET THAT CONTRACT WITH  
5 THE CITY?

6 A. NO.

7 Q. YOU RECALL CLEARLY THAT THAT NEVER HAPPENED?

8           A.       TO BE HONEST WITH YOU, WE PUT SO MUCH EFFORT INTO  
9 TRYING TO GET OUR JOBS IN THERE THAT, YOU KNOW, WE TOLD THEM  
10 THAT WE WOULD LOBBY THE CITY, LOBBY THE CITY COUNCIL, EXPRESS  
11 OUR CONCERNS TO THEM, AND THAT WE WILL ASK THEM THAT THEY, IF  
12 THEY DIDN' T HIRE OUR MEMBERS THAT WE WERE GOING TO TELL THE  
13 COUNCIL NOT TO GIVE THEM THE CONTRACT. WE ALWAYS DO THAT, BUT  
14 RIGHT NOW WE ARE DOING THE SAME THING ALL OVER AGAIN WITH THE  
15 CITY OF SAN JOSE.

16           Q.       I DON' T WANT TO TALK ABOUT RIGHT NOW. LET ME JUST  
17 SAY I APPRECIATE YOUR COMING HERE AND I THINK THAT WE HAVE  
18 BEEN PATIENT IN TERMS OF GETTING OUT THE FACTS, BUT WE' RE  
19 GOING INTO OUR SECOND HOUR NOW. I' M SURE YOU DON' T WANT TO BE  
20 HERE FOR TWO DAYS.

21                   IF YOU CAN TRY TO REALLY ANSWER ONLY WHAT I' M ASKING  
22 AND NOT EXPAND UPON IT, I THINK IT WILL GO FASTER.

23           A.       OKAY.

24           Q.       SO AS I UNDERSTAND YOUR ANSWER, YOU TOLD NORCAL THAT  
25 IF THEY DIDN' T ESSENTIALLY MEET YOUR CONCERNS, ADDRESS YOUR  
26 CONCERNS ABOUT CWS' S MRF WORKERS, YOU WERE GOING TO LOBBY THE  
27 COUNCIL, I GUESS THE MAYOR, AGAINST AWARDDING NORCAL A  
28 CONTRACT, CORRECT?

SUE HERFURTH, CSR #9645

492

1           A.       YES.

2                   MR. FINKELSTEIN: CAN WE PUT UP EXHIBIT 7, PLEASE?  
3 BY MR. FINKELSTEIN:

4           Q.       MR. MORALES, CAN YOU TAKE A LOOK AT EXHIBIT 7.  
5 THERE' S TWO LETTERS HERE, I WANT TO SHOW YOU THE SECOND

6 LETTER. CAN YOU TELL US WHAT THIS SECOND LETTER IN EXHIBIT 7,  
7 WHICH IS DATED OCTOBER 4, 2000 AND ADDRESSED TO YOU, IS?  
8 A. UH -- IF I MAY RECALL --  
9 Q. LET ME PUT UP ANOTHER COPY OF THIS. CAN YOU READ IT  
10 FROM WHERE YOU ARE?  
11 A. YES, SIR.  
12 Q. IS THIS A LETTER YOU RECEIVED BY FAX ON OCTOBER 4,  
13 2000, FROM NORCAL?  
14 A. YES, SIR.  
15 Q. LET ME SHOW YOU PAGE TWO. DO YOU KNOW WHO SIGNED THE  
16 LETTER ON BEHALF OF NORCAL?  
17 A. MICHAEL SANGIACOMO.  
18 Q. IT SAYS FOR MICHAEL SANGIACOMO, SO THE PRINTED  
19 PORTION IS MICHAEL SANGIACOMO.  
20 A. YES, SIR.  
21 Q. BUT THERE IS SOME SIGNATURE ABOVE IT. THAT'S  
22 APPARENTLY SOMEONE SIGNING ON HIS BEHALF, CORRECT?  
23 A. YES.  
24 Q. DO YOU KNOW WHO SIGNED IT?  
25 A. NO.  
26 Q. OKAY. DO YOU KNOW WHY THIS LETTER WAS SENT TO YOU,  
27 FAXED TO YOU ON OCTOBER 4?  
28 A. I GUESS IT WAS BECAUSE OF ALL OF MY CONCERNS FROM

SUE HERFURTH, CSR #9645

493

1 ACCEPTING THE NEW OPERATIONS, AND HE WAS ADVISING ME AT THIS  
2 TIME THAT THEY WERE GOING TO RECOGNIZE THE JOBS FOR THE  
3 DRIVERS AND MECHANICS. AND HE SAID IN HIS LETTER IF ANYBODY

4 COULDN' T FIND A JOB, THEY WERE GOING TO TRY TO GET A JOB SOME  
5 PLACE ELSE, AT OTHER FACILITIES.

6 Q. FIRST OF ALL, GIVEN THAT THIS LETTER WAS FAXED TO YOU  
7 OCTOBER 4, ADDRESSES SOME OF YOUR CONCERNS, WOULDN' T IT BE  
8 CORRECT THEN YOU HAVE MUST HAVE SPOKEN WITH NORCAL ON OR  
9 BEFORE OCTOBER 4, 2000?

10 A. YEAH, I SAID THAT.

11 Q. OKAY. NOW, THERE' S A PORTION OF THE LETTER THAT  
12 ADDRESSES THE MRF WORKERS, CORRECT?

13 IF YOU LOOK AT THE PARAGRAPH THAT BEGINS "CONCERNING  
14 MRF EMPLOYEES, WE WILL OFFER POSITIONS TO ALL CURRENT LOCAL  
15 350 REPRESENTED EMPLOYEES WHO ARE DISPLACED WHEN NORCAL IS  
16 AWARDED THE CONTRACTS AND WHO DO NOT FIND POSITIONS WITH  
17 CALIFORNIA WASTE SOLUTIONS. WE WILL OFFER JOB TRAINING AND  
18 PLACEMENT WITHIN THE SAN JOSE OPERATION AND/OR AT ONE OF OUR  
19 OTHER SITES LISTED ABOVE. AGAIN, EACH OF THESE OPERATIONS IS  
20 REPRESENTED BY LOCAL 350.

21 DO YOU SEE THAT PARAGRAPH?

22 A. YES.

23 Q. DID THAT ADDRESS ALL OF YOUR CONCERNS?

24 A. NO.

25 Q. WHY NOT?

26 A. WHEN I READ THE LETTER CONCERNING THE CWS FOR THE MRF  
27 EMPLOYEES, I GOT THE IMPRESSION FROM THAT LETTER THAT THEY  
28 STILL HAVE THE INTENTION OF BRINGING PEOPLE FROM OAKLAND. BUT

SUE HERFURTH, CSR #9645

2 TRY TO TRAIN THEM AND FIND A JOB SOMEPLACE ELSE.

3 Q. SO WOULD IT ALSO BE TRUE THAT THIS PROPOSAL OR LETTER  
4 FROM NORCAL DIDN'T GUARANTEE THAT THE WORKERS WHO FOUND JOBS  
5 WITH CWS WOULDN'T HAVE TO TAKE A CUT IN WAGES AND BENEFITS,  
6 DID IT?

7 A. IT DID, BECAUSE IF THEY CAN FIND JOBS WITH CWS, AND  
8 AS YOU CAN SEE THE LETTER IN THERE, THEY WERE GOING TO TRAIN  
9 THEM SOMEPLACE ELSE OR PLACE THEM SOMEPLACE ELSE. I KNEW IT  
10 WAS IMPOSSIBLE.

11 Q. BUT LET'S LOOK AT WHAT NORCAL IS SAYING HERE. FIRST  
12 OF ALL, THEY ARE SAYING THAT THEY ARE ONLY GOING TO TRAIN AND  
13 FIND JOBS ELSEWHERE FOR PEOPLE WHO DON'T FIND WORK WITH CWS.

14 A. YES.

15 Q. THERE IS NOTHING IN THE LETTER ABOUT THE PEOPLE WHO  
16 DO FIND WORK WITH CWS GETTING THE SAME WAGES AND BENEFITS, IS  
17 THERE?

18 A. NO.

19 Q. SO THAT'S AN ISSUE, RIGHT?

20 A. YES, SIR.

21 Q. AND THERE IS NOTHING IN HERE ABOUT THE WORKERS WHO  
22 FIND JOBS AT CWS BEING REPRESENTED BY THE TEAMSTERS, RIGHT?

23 A. IF YOU READ THE LETTER, THERE IS AN ISSUE OF THE  
24 OPERATION IS REPRESENTED BY LOCAL 350. THAT'S WHAT THE LETTER  
25 SAYS.

26 Q. IS THERE ANYTHING IN THE LETTER THAT SAYS PEOPLE WHO  
27 FIND WORK WITH CWS WILL BE REPRESENTED BY THE TEAMSTERS?

28 A. NO.

1 Q. NO. SO THAT'S ALSO A PROBLEM, RIGHT?

2 A. YES, SIR.

3 Q. OKAY. SO YOUR REACTION TO THIS, I TAKE IT, WAS THAT  
4 THIS LETTER DIDN'T RESOLVE THE PROBLEMS THAT YOU SAW WITH THIS  
5 SITUATION, RIGHT?

6 A. YES, SIR.

7 Q. LET ME SHOW YOU WHAT HAS BEEN MARKED AS GRAND JURY  
8 EXHIBIT 12. IS THIS A LETTER THAT YOU PREPARED ON OR ABOUT  
9 OCTOBER 5, 2000?

10 A. YES, SIR.

11 Q. IS THIS A LETTER THAT YOU SENT TO MAYOR GONZALES ON  
12 OCTOBER 5, 2000?

13 A. YES, SIR.

14 Q. HOW DID YOU SEND THIS LETTER TO THE MAYOR?

15 A. BY FAX.

16 Q. WHO PREPARED THE LETTER?

17 A. I DID.

18 Q. WHY DID YOU SEND THIS LETTER TO THE MAYOR?

19 A. WELL, AFTER TALKING TO NORCAL, CWS, I STILL HAD THE  
20 QUESTIONS THAT YOU OUTLINED A COUPLE OF MINUTES AGO, YOU KNOW,  
21 ABOUT THE REPRESENTATION, AND ALSO THAT IT WAS THE  
22 REPRESENTATION WITH CWS THAT THEY WERE GOING TO BRING IN THE  
23 CONTRACT WITH THE LONGSHOREMEN. AND I FELT THAT THE MAYOR  
24 SHOULD NOT INTRODUCE THIS PROPOSAL OR ANY OF THE  
25 RECOMMENDATIONS BECAUSE I DIDN'T FIND THE PRESENT SITUATION AT  
26 THAT TIME TO BE LEGAL.

27 Q. OKAY. BEFORE WRITING THIS LETTER, HAD YOU ASKED THE  
28 MAYOR TO DEFER SUBMISSION TO THE CITY COUNCIL THE SELECTION OF

1 A CONTRACTOR?

2 A. I DIDN'T UNDERSTAND THAT.

3 Q. BEFORE SENDING THIS LETTER TO THE MAYOR, HAD YOU  
4 ASKED THE MAYOR TO DEFER ANY COUNCIL ACTION WITH REGARD TO THE  
5 SELECTION OF VENDORS?

6 A. YES, SIR.

7 Q. WHEN DID YOU DO THAT?

8 A. PRIOR TO WRITING THIS LETTER.

9 Q. OKAY. ARE WE TALKING ABOUT HOURS PRIOR, DAYS PRIOR,  
10 WEEKS PRIOR?

11 A. AS I STATED BEFORE, SIR, I WISH I COULD TELL YOU THE  
12 TIMETABLE, BUT I DON'T RECALL THAT.

13 Q. WOULD IT HAVE BEEN SHORTLY BEFORE THIS LETTER?

14 A. COULD HAVE BEEN, COULD HAVE BEEN A WEEK, COULD HAVE  
15 BEEN THREE OR FOUR DAYS. THERE WAS A LOT OF STUFF GOING ON AT  
16 THAT PARTICULAR TIME SIX YEARS AGO.

17 Q. OKAY, AND WHAT WAS YOUR PURPOSE IN SENDING THIS  
18 LETTER TO THE MAYOR?

19 A. TO TRY TO ASK THE MAYOR THAT HE SHOULD GET A FIRM  
20 COMMITMENT FROM THESE VENDORS THAT THEY WERE GOING TO COMPLY  
21 WITH THE LAW, THAT THERE WAS LEGAL ISSUES THAT WERE STILL  
22 PENDING, AND IN MY OPINION AND THAT OF OUR ATTORNEYS, THAT THE  
23 ISSUES WERE NOT RESOLVED.

24 Q. SO TO TRY AND SUMMARIZE, WAS THE PRIMARY PURPOSE OF  
25 THIS LETTER TO GET THE MAYOR TO DEFER A VOTE BY THE COUNCIL?

26 A. YES, SIR.

27 Q. IN YOUR LETTER, DO YOU SAY TO THE MAYOR, "YOU AND  
28 YOUR STAFF HAVE BEEN VERY HELPFUL IN WORKING THROUGH THE

1 PROBLEMS CONCERNING COMPLIANCE BY NORCAL WITH THE CITY' S  
2 POLICY THAT PROTECTS THE EMPLOYMENT OF THE CURRENT EMPLOYEES  
3 AFFECTED BY A CHANGE IN FRANCHISES?"

4 A. I DON' T SEE THAT.

5 Q. (INDICATING.)

6 A. OH, OKAY.

7 Q. DOES THAT SENTENCE APPEAR IN YOUR LETTER?

8 A. YES.

9 Q. AND WHEN YOU SAID IN YOUR LETTER TO THE MAYOR "YOU  
10 AND YOUR STAFF HAVE BEEN VERY HELPFUL," WHO WERE YOU REFERRING  
11 TO?

12 A. I WAS REFERRING TO THE CHIEF OF STAFF AT THAT TIME.

13 Q. WHO WAS THAT?

14 A. I THINK IT WAS JUDE.

15 Q. J-U-D-E?

16 A. YEAH.

17 Q. HOW IS THE LAST NAME SPELLED?

18 A. L-A-W -- I DON' T KNOW IF IT IS, BUT I KNOW THE NAME  
19 WAS JUDE.

20 Q. ANYONE ELSE?

21 A. I WOULD SAY CARL MOSHER. CARL MOSHER, HE PLAYED A  
22 VERY IMPORTANT ROLE IN THIS.

23 Q. IS CARL MOSHER PART OF THE MAYOR' S STAFF?

24 A. TO THE BEST OF MY RECOLLECTION, YES, HE WORKS FOR THE  
25 CITY.

26 Q. SO EVERYONE WHO WORKS FOR THE CITY IN YOUR MIND IS

27 PART OF THE MAYOR' S STAFF?

28 A. IS PART OF THE CITY ADMINISTRATION.

SUE HERFURTH, CSR #9645

498

1 Q. BUT YOU DIDN' T SAY THE CITY ADMINISTRATION IN YOUR  
2 LETTER, YOU SAID "YOU AND YOUR STAFF. "

3 A. OKAY --

4 Q. I DIDN' T WRITE THE LETTER -- WAIT, MR. MORALES. I  
5 DIDN' T WRITE THE LETTER, I WAS NOT WITNESS TO ANYTHING, SO I  
6 HAVE TO ASK QUESTIONS OF WITNESSES WHO MAY BE ABLE TO TELL US  
7 WHAT HAPPENED, SO I NEED TO UNDERSTAND.

8 THAT IS YOUR LANGUAGE, AND I NEED TO UNDERSTAND, I' M  
9 SIMPLY TRYING TO UNDERSTAND WHAT YOU HAVE IN MIND WHEN YOU SAY  
10 "YOU, " AND YOU REFER TO THE MAYOR AND THE MAYOR' S STAFF.

11 SO, IN YOUR MIND, DOES THE MAYOR' S STAFF INCLUDE  
12 ANYONE WHO WORKS FOR THE CITY?

13 A. YES, SIR.

14 Q. WHEN YOU SAID IN THIS LETTER THAT THE MAYOR AND HIS  
15 STAFF HAVE BEEN VERY HELPFUL, WHAT ARE YOU REFERRING TO?

16 A. THIS ADDRESSES MY CONCERNS TO THE MAYOR, YOU KNOW,  
17 THERE' S MANY TIMES YOU DON' T TALK TO THE MAYOR DIRECTLY, YOU  
18 TALK TO STAFF MEMBERS.

19 SO ANYTIME THAT WE, MYSELF OR THE AGENTS OF THE  
20 UNION, WE TALK TO THE CITY STAFF OF DIFFERENT DEPARTMENTS, OUR  
21 HOPE WAS THAT THEY WILL CONVEY TO THE MAYOR WHAT OUR CONCERNS  
22 WERE, WHY WERE WE SO CONCERNED ABOUT THE JOBS.

23 Q. MR. MORALES, I GOT THE IMPRESSION FROM YOUR TESTIMONY  
24 EARLIER THIS MORNING THAT IN YOUR EARLIER MEETING WITH THE

25 MAYOR WHEN YOU RAISED YOUR CONCERNS ACCORDING TO WHAT YOU TOLD  
26 US AN HOUR AGO, THE MAYOR SAID, THIS IS A MATTER OF  
27 JURISDICTION BETWEEN THE TWO DIFFERENT UNIONS, I REALLY CAN'T  
28 GET INVOLVED IN IT. IS THAT WHAT HE TOLD YOU CONCERNING THE

SUE HERFURTH, CSR #9645

499

1 JURISDICTION OF THE UNION?

2 A. YES.

3 Q. THAT WAS SOMETHING YOU THOUGHT WAS VERY HELPFUL TO  
4 YOUR PROBLEM?

5 A. NO.

6 Q. SO WHAT DID THE MAYOR DO THAT YOU SAID IN YOUR LETTER  
7 WAS HELPFUL?

8 A. ABOUT -- THERE WAS MANY OTHER ISSUES BESIDES  
9 LONGSHOREMEN'S JURISDICTION WITH US. THERE WAS THE ISSUES OF  
10 THE WAGES, JOB RETENTION, AND SO ON. IT WASN'T JUST ONE  
11 ISSUE.

12 Q. DID THE MAYOR TELL YOU IN YOUR EARLIER MEETINGS,  
13 BEFORE OCTOBER 5, 2000, THAT HE WOULD MAKE SURE THAT CWS PAID  
14 NO LESS THAN THE EXISTING WAGES AND BENEFITS?

15 A. NO, SIR.

16 Q. SO HE DIDN'T HELP YOU ON THE WAGES AND BENEFITS?

17 A. NO.

18 Q. SO HOW DID HE HELP YOU?

19 A. BY ASSURING ME THAT NORCAL MAINLY WAS GOING TO COMPLY  
20 WITH THE LAW BY HIRING THE DRIVERS, MECHANICS. WE HAD A LOT  
21 OF --

22 Q. BUT THAT WAS ALREADY IN THE RFP THAT THEY HAD TO

23 FIRST OFFER JOBS TO EXISTING WORKERS?

24 A. YES. THE SAME LANGUAGE APPLIED TO CWS, TOO. I  
25 DIDN'T REALLY BELIEVE DURING THAT PERIOD IT WAS REALLY  
26 HAPPENING WHEN THEY SAID THEY WERE NOT GOING TO IMPORT WORKERS  
27 FROM OAKLAND.

28 I HAD CONCERN THAT, NOT WITH THE DRIVERS AND

SUE HERFURTH, CSR #9645

500

1 MECHANICS, I WAS CONVINCED, YOU KNOW, THAT THERE WOULD BE NO  
2 PROBLEM. BUT WHEN IT CAME TO RECYCLERS, I CONTINUED UNTIL  
3 THEY SIGNED THE M-O-U, MEMORANDUM OF UNDERSTANDING, WITH THE  
4 CITY AND UNION. I DIDN'T REALLY BELIEVE NORCAL OR CWS THAT  
5 THEY WERE GOING TO HIRE THE MEMBERS --

6 Q. YOU'RE GETTING WAY AHEAD IN YOUR STORY. I WANT TO  
7 FOCUS ON THIS LETTER OF OCTOBER 5, 2000. PRIOR TO WRITING  
8 THIS LETTER, YOU TOLD US THE MAYOR DID NOT TELL YOU THAT HE  
9 WAS GOING TO HELP YOU MAKE SURE THAT THE MRF WORKERS HIRED BY  
10 CWS WERE REPRESENTED BY TEAMSTERS. THAT'S YOUR TESTIMONY,  
11 RIGHT?

12 A. YES, SIR, IT IS.

13 Q. HE DID NOT TELL YOU THAT HE WAS GOING TO MAKE SURE IN  
14 FACT MRF WORKERS HIRED BY CWS GOT NO LESS THAN THEIR EXISTING  
15 WAGES AND BENEFITS?

16 A. NO, SIR.

17 Q. NO, SIR, MEANING THAT'S CORRECT?

18 A. THAT'S CORRECT.

19 Q. SO HOW DID THE MAYOR, HOW HAD THE MAYOR AND HIS STAFF  
20 BEEN, TO QUOTE YOUR WORDS, "VERY HELPFUL"?

21 A. BECAUSE THEY WERE ALWAYS ACCESSIBLE TO US. THEY WERE  
22 HELPFUL IN GETTING US INFORMATION THAT WE NEEDED FROM THE  
23 DIFFERENT DEPARTMENTS.

24 THEY -- AS YOU RECALL, WE WERE NOT ONLY TALKING  
25 ABOUT RECYCLING EMPLOYEES, WE WERE TALKING ABOUT DRIVERS,  
26 MECHANICS, SO THEY WERE HELPING WITH THOSE JOBS. THEY WERE  
27 ASSURING US THEY WERE GOING TO MAKE SURE THEY NOT ONLY GOT  
28 RETAINED, BUT WERE GOING TO GET THE PREVAILING WAGES, WHICH IS

SUE HERFURTH, CSR #9645

501

1 VERY IMPORTANT WITH OUR DRIVERS AND MECHANICS. THEY DID  
2 ESTABLISH PREVAILING WAGES, SO IN MY OPINION THEY WERE VERY  
3 HELPFUL MAKING SURE THAT BECAME PART OF THE RFP.

4 Q. IT WAS PART OF THE RFP, WASN'T IT?

5 A. YEAH, IT WAS.

6 Q. SO DID YOU HAVE ANY REASON TO DOUBT THAT THEY WERE  
7 NOT GOING TO GET PREVAILING WAGES?

8 A. I SAID THAT SOMEWHERE ALONG THE LINE THAT GOT INTO  
9 THE RFP WITH THE HELP OF MANY PEOPLE TO MAKE SURE THOSE WERE  
10 CONDITIONS FOR THE VENDORS.

11 Q. BUT THE RFP WENT OUT THE FIRST HALF OF THAT YEAR.  
12 THAT'S WATER UNDER THE BRIDGE, ISN'T IT?

13 A. WELL, THERE WAS QUESTIONS. I DON'T HAVE THE DOCUMENT  
14 BEFORE ME, BUT ALL ALONG THERE WERE MANY QUESTIONS, AND SEEING  
15 THINGS THAT WERE OF CONCERN TO US, AND IN ORDER FOR US TO  
16 PROTECT WORKERS AND JOBS WE HAVE TO INSURE THAT, FROM THE  
17 BEGINNING TO THE END, EVEN TODAY, UP TO TODAY, THINGS ARE  
18 FOLLOWED.

19 SOMETIMES THINGS FALL BY THE SIDEWAYS AND ARE NOT  
20 FOLLOWED OR ENFORCED. WE WERE JUST CONCERNED --

21 Q. OKAY. IN YOUR LETTER OF OCTOBER 5, 2000, DID YOU  
22 MAKE REFERENCE TO AN UNFAIR LABOR PRACTICE CHARGE THAT YOU HAD  
23 FILED AGAINST CWS WITH THE NATIONAL LABOR RELATIONS BOARD, OR  
24 NLRB?

25 A. IF I COULD PLEASE ASK YOU TO GO HIGHER ON THE LETTER.  
26 I THINK I DID -- YES, I DID SAY THIS.

27 Q. IN FACT, YOU SAY IN YOUR LETTER, IN THE THIRD  
28 PARAGRAPH, "WE HAVE FILED AN UNFAIR LABOR PRACTICE CHARGE WITH

SUE HERFURTH, CSR #9645

502

1 THE NLRB AGAINST CWS," CORRECT?

2 A. YES, SIR.

3 Q. YOU ACTUALLY ATTACHED -- A COPY OF THE CHARGE WITH  
4 YOUR LETTER, CORRECT?

5 A. YES, SIR.

6 Q. AND THIS IS PREPARED BY YOUR ATTORNEY, MR. BEESON?

7 A. YES, SIR.

8 Q. AN THE DATE ON THIS IS OCTOBER 5, 2000?

9 A. YES.

10 Q. AND YOU AUTHORIZED MR. BEESON TO PREPARE THAT UNFAIR  
11 LABOR PRACTICE CHARGE AGAINST CWS?

12 A. YES, SIR.

13 Q. WAS THIS UNFAIR LABOR PRACTICE CHARGE AGAINST CWS  
14 ACTUALLY FILED WITH THE NLRB?

15 A. YES, IT WAS.

16 Q. AT THE TIME THAT THIS CHARGE AGAINST CWS WAS

17 PREPARED, WERE THE MRF WORKERS EMPLOYED BY CWS REPRESENTED BY  
18 THE LONGSHOREMEN?

19 A. NO, SIR.

20 Q. THEY WERE NOT REPRESENTED BY THE LONGSHOREMEN?

21 A. NO, SIR.

22 Q. WHO WERE THEY REPRESENTED BY?

23 A. LET ME THINK. THEY WERE REPRESENTED BY ME AND MY  
24 LOCAL 350.

25 Q. THE MRF WORKERS EMPLOYED BY CWS?

26 A. THEY WERE EMPLOYED BY WASTE MANAGEMENT.

27 Q. MR. MORALES, LISTEN TO MY QUESTION.

28 A. OKAY.

SUE HERFURTH, CSR #9645

503

1 Q. AT THE TIME THAT THIS CHARGE WAS PREPARED, DID CWS  
2 HAVE, EMPLOY MRF WORKERS?

3 A. NO, SIR.

4 Q. WHO DID THE SORTING IN OAKLAND?

5 A. CWS.

6 Q. DID THEY HAVE MRF WORKERS THERE?

7 A. TO THE BEST OF MY KNOWLEDGE, YES.

8 Q. WHO REPRESENTED THEM?

9 A. THE LONGSHOREMEN.

10 Q. AT THE TIME THIS CHARGE WAS FILED, CWS HAD THE  
11 RECYCLING FACILITY IN SAN JOSE?

12 A. NO, SIR.

13 Q. AT THE TIME THAT THIS CHARGE WAS PREPARED, DID CWS  
14 EMPLOY ANY MRF WORKERS REPRESENTED BY THE TEAMSTERS?

15 A. I DON'T KNOW IN THE EAST BAY, BUT IN SAN JOSE, NO.

16 Q. WELL, YOU JUST TOLD US THE OAKLAND CWS WORKERS WERE  
17 REPRESENTED BY THE LONGSHOREMEN.

18 A. YEAH, BUT THERE WOULD BE OTHER LOCATIONS, OAKLAND OR  
19 ALL THE CITIES IN THE EAST BAY COULD BE REPRESENTED BY  
20 TEAMSTERS, NOT BY MY LOCAL.

21 Q. AT THE TIME THE CHARGE AGAINST CWS WAS PREPARED, DID  
22 THE TEAMSTERS, YOUR LOCAL, HAVE A COLLECTIVE BARGAINING  
23 AGREEMENT WITH CWS?

24 A. NO, SIR.

25 Q. NOW, WHAT RELIEF WERE YOU ASKING FROM THE NLRB?

26 A. THE RELIEF THAT WE WERE ASKING WAS TO ESTABLISH THAT  
27 CWS AND LONGSHOREMEN'S UNION DO NOT HAVE A VALID LEGAL  
28 CONTRACT TO REPRESENT RECYCLING WORKERS IN THE CITY OF SAN

SUE HERFURTH, CSR #9645

504

1 JOSE. WE BELIEVE THAT THAT WAS ILLEGAL.

2 Q. OKAY. SO YOUR CHARGE WAS THAT CWS COULD NOT LEGALLY  
3 EXTEND ITS COLLECTIVE BARGAINING AGREEMENT FROM OAKLAND TO  
4 SAN JOSE?

5 A. YES, SIR.

6 Q. AND WHAT, I UNDERSTAND THAT'S THE CHARGE. THE  
7 QUESTION IS WHAT RELIEF, WHAT REMEDY DID YOU WANT THE NATIONAL  
8 LABOR RELATIONS BOARD TO GIVE YOU?

9 A. TO ESTABLISH THAT CWS COMING INTO THE CITY OF SAN  
10 JOSE WAVING A CONTRACT, SAYING, I HAVE A CONTRACT WITH LOCAL  
11 6, WAS ILLEGAL; THEREFORE, THE LABOR BOARD COULD ORDER THIS  
12 EMPLOYEE OF CWS TO REFRAIN FROM EXERCISING THE LONGSHOREMEN'S

13 CONTRACT WITH MY MEMBERS AND THE CITY OF SAN JOSE BECAUSE THEY  
14 WERE NOT WORKERS OF CWS AND/OR MEMBERS OF THE LONGSHOREMEN  
15 UNION.

16 Q. LET ME SEE IF I CAN ASK IT A DIFFERENT WAY. I  
17 APOLOGIZE; MY QUESTION ISN'T CLEAR.

18 YOU WERE NOT ASKING THE NATIONAL LABOR RELATIONS  
19 BOARD TO SAY THAT THE CWS NEW WORKERS IN SAN JOSE HAD TO BE  
20 TEAMSTERS, WERE YOU?

21 A. WELL, I DON'T KNOW WHAT YOU MEAN BY NEW WORKERS.  
22 THERE WERE NO NEW WORKERS; THESE WERE MY MEMBERS FOR MANY  
23 YEARS PRIOR TO 2000 WHEN THE OPERATION TOOK PLACE.

24 Q. WHEN YOU FILED THIS CHARGE IN 2000, OCTOBER 5, 2000,  
25 CWS DID NOT EMPLOY ANY MRF WORKERS IN SAN JOSE, CORRECT?

26 A. THAT'S CORRECT.

27 Q. CWS DID NOT HAVE A RECYCLING FACILITY IN SAN JOSE?

28 A. NO, SIR.

SUE HERFURTH, CSR #9645

505

1 Q. IF NORCAL AND ITS SUBCONTRACTOR, CWS, WERE GRANTED  
2 THE CONTRACT WITH THE CITY, CWS WAS GOING TO BUILD A NEW  
3 RECYCLING FACILITY IN SAN JOSE?

4 A. YES, SIR.

5 Q. THAT WAS GOING TO BE BECOME OPERATIONAL JULY 1, 2002,  
6 CORRECT?

7 A. YES, SIR.

8 Q. ON OR ABOUT THAT DAY, CWS WAS GOING TO HIRE WORKERS,  
9 CORRECT?

10 A. YES, SIR.

11 Q. TO STAFF THAT NEW FACILITY?  
12 A. THAT'S CORRECT.  
13 Q. THE MOST THAT THE NATIONAL LABOR RELATIONS BOARD  
14 COULD HAVE DONE FOR YOU WAS TO RULE THAT THESE WORKERS HAD THE  
15 RIGHT TO ORGANIZE AND PICK WHATEVER UNION THEY WANTED?  
16 A. THAT'S CORRECT.  
17 Q. THAT WAS NOT A GUARANTEE THEY WERE GOING TO PICK  
18 TEAMSTERS, WAS IT?  
19 A. NO, SIR.  
20 Q. THIS NATIONAL LABOR RELATIONS BOARD WAS CERTAINLY NOT  
21 GOING TO GUARANTEE OR ORDER CWS TO PAY EXISTING WAGES AND  
22 BENEFITS, WAS IT?  
23 A. NO, SIR.  
24 MR. FINKELSTEIN: SHALL WE TAKE OUR LUNCHEON RECESS?  
25 THE FOREMAN: LET ME REMIND YOU, MR. MORALES, OF THE  
26 CONFIDENTIALITY ADMONITION THAT APPLIES. DO YOU WANT ME TO  
27 READ IT AGAIN?  
28 THE WITNESS: NO, THAT'S FINE, I UNDERSTAND.

SUE HERFURTH, CSR #9645

506

1 MR. FINKELSTEIN: HAVE A GOOD LUNCH. WE'LL SEE YOU  
2 AT 1:30.

3 (THE LUNCHEON RECESS WAS TAKEN.)  
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SUE HERFURTH, CSR #9645

507

1 SAN JOSE, CALI FORNIA

FEBRUARY 8, 2006

2

3

AFTERNOON SESSI ON:

4

THE FOREMAN: ALL JURORS ARE HERE. WE' RE READY TO

5

GO.

6

EXAMI NATI ON, CONTI NUED:

7 BY MR. FINKELSTEIN:

8 Q. MR. MORALES, GOOD AFTERNOON. I'LL JUST REMIND YOU  
9 YOU'RE STILL UNDER OATH.

10 A. YES.

11 Q. MR. MORALES, WHEN WE RECESSED FOR THE LUNCH HOUR, I  
12 THINK YOU HAD TOLD US THAT YOU REALIZED THAT THE NLRB COULD  
13 NOT GUARANTEE YOUR WORKERS GETTING THE EXISTING WAGES AND  
14 BENEFITS, CORRECT?

15 A. THAT'S CORRECT.

16 Q. COULD NOT GUARANTEE THAT THE WORKERS WOULD ULTIMATELY  
17 SELECT THE TEAMSTERS TO REPRESENT THEM, CORRECT?

18 A. THAT'S CORRECT.

19 Q. AND ISN'T THAT THE REASON THAT YOU ENLISTED MAYOR  
20 GONZALES'S HELP WITH YOUR PROBLEM INSTEAD OF SIMPLY RELYING ON  
21 THIS NLRB CHARGE TO RESOLVE YOUR PROBLEM?

22 A. MAYOR GONZALES, LAWYERS, CITY COUNCIL MEMBERS, MANY  
23 PEOPLE.

24 Q. BECAUSE YOU KNEW THE OUTCOME OF THE NLRB CHARGE WAS  
25 NOT GOING TO SOLVE ALL YOUR PROBLEMS?

26 A. WELL, IT WAS GOING TO SOLVE SOME PROBLEMS.

27 Q. BUT IT WASN'T GOING TO SOLVE THE PROBLEMS OF WAGES  
28 AND BENEFITS, RIGHT?

SUE HERFURTH, CSR #9645

508

1 A. NO.

2 Q. NO, IT'S NOT RIGHT, OR --

3 A. NO, IT'S CORRECT.

4 Q. AND IT'S ALSO CORRECT IT WOULDN'T GUARANTEE THAT THE  
Page 64

5 TEAMSTERS WOULD CONTINUE TO REPRESENT THE WORKERS?

6 A. BUT IT WILL GUARANTEE THAT THE LONGSHOREMEN COULD NOT  
7 COME IN WITH CWS WITH THEIR ILLEGAL CONTRACT.

8 Q. AND THAT WOULD ONLY BE THE CASE IF YOU WERE  
9 ULTIMATELY SUCCESSFUL WITH THE NLRB?

10 A. IN ACCORDANCE WITH THE LAWYER, MR. BEESON, THERE  
11 WASN'T NO OTHER WAY NLRB WOULD RULE, IT WOULD RULE IN OUR  
12 FAVOR.

13 Q. DID THE NLRB RULE IN YOUR FAVOR?

14 A. WE WITHDREW THE CHARGE EVENTUALLY.

15 Q. IS IT CORRECT THE WAY THE NLRB PROCESS WORKS, ANYONE  
16 CAN FILE A CHARGE, BUT THE FIRST THRESHOLD OR HURDLE YOU HAVE  
17 TO GET OVER IS TO GET NLRB TO ISSUE A COMPLAINT BASED ON YOUR  
18 CHARGE, CORRECT?

19 A. THAT'S CORRECT.

20 Q. DID THE NLRB EVER ISSUE A COMPLAINT OR CHARGE?

21 A. WE WITHDREW THE CHARGE.

22 Q. SO THE ANSWER TO MY QUESTION IS THEY NEVER ISSUED A  
23 COMPLAINT?

24 A. WE WITHDREW THE CHARGE; THEY HAD NO OPPORTUNITY TO  
25 ISSUE A CHARGE.

26 Q. WHEN DID YOU WITHDRAW THE CHARGE?

27 A. I DON'T KNOW EXACTLY THE DATE, BUT IT WAS AFTER WE  
28 HAD FILED IT. WE FINALLY GOT ASSURANCES FROM THE COMPANY,

SUE HERFURTH, CSR #9645

509

1 CWS, THAT THEY WILL SIT DOWN WITH US AND RECOGNIZE THE FACT  
2 THAT WE WERE THE DULY REPRESENTATIVES FOR THESE MEMBERS.

3 Q. SO TO ANSWER MY QUESTION, DO YOU REMEMBER THE DATE  
4 YOU WITHDREW THE CHARGES?

5 A. AT THE END OF 2000.

6 Q. DO YOU REMEMBER WHEN?

7 A. COULD HAVE BEEN A MONTH OR OVER A MONTH AFTER WE  
8 FILED THE CHARGE.

9 Q. WASN'T IT ACTUALLY TWO MONTHS LATER?

10 A. YES, IT COULD HAVE BEEN. I SAID ALREADY A MONTH.

11 MR. FINKELSTEIN: LET'S MARK AS GRAND JURY EXHIBIT  
12 65 THIS DECEMBER 6, 2000 LETTER TO NLRB FROM YOUR ATTORNEY,  
13 MR. BEESON.

14 THE WITNESS: YES, SIR.

15 THE FOREMAN: SO MARKED.

16 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
17 JURY EXHIBIT 65.)

18 BY MR. FINKELSTEIN:

19 Q. COULD YOU TELL US WHAT THIS EXHIBIT IS?

20 A. THIS EXHIBIT, TO THE BEST OF MY KNOWLEDGE, IS A  
21 LETTER FROM OUR LOCAL UNION'S SENIOR ATTORNEY WITHDRAWING THE  
22 CHARGE THAT WE HAVE FILED AGAINST CWS, BASED ON THE FACT THAT  
23 THEY WERE MAKING AN ARRANGEMENT WITH US TO SOLVE THE DISPUTE  
24 THAT WE HAVE.

25 Q. SO THIS WOULD BE TWO MONTHS AFTER YOU FIRST FILED THE  
26 CHARGE ON OCTOBER 5, RIGHT?

27 A. YES, SIR.

28 Q. IN THAT INTERVENING TWO MONTHS, DID NLRB ISSUE A

1 COMPLAINT?

2 A. NO, SIR.

3 Q. IN ADDITION TO THE LETTER TO THE MAYOR ASKING FOR THE  
4 POSTPONEMENT OF THE VOTE BY THE CITY COUNCIL, DID YOU ALSO  
5 SEND LETTERS TO OTHER MEMBERS OF THE CITY COUNCIL?

6 A. TO THE BEST OF MY KNOWLEDGE, I SENT THEM FAXES, YOU  
7 KNOW, A CARBON COPY OF MY LETTER.

8 Q. THE LETTER TO THE MAYOR?

9 A. YES, SIR.

10 Q. LET'S MARK -- I HAVE A SERIES OF WHAT APPEAR TO BE  
11 IDENTICAL LETTERS DATED OCTOBER 6, 2000 TO VARIOUS  
12 COUNCILMEMBERS: LINDA LEZOTTE, GEORGE SHIRAWAWA, FRANK  
13 FISCALINI, ALICE WOOD, CINDY CHAVEZ, JOHN DIQUISTO.

14 I WOULD ASK THAT ALL OF THESE LETTERS BE MARKED AS  
15 ONE EXHIBIT, 66.

16 THE FOREMAN: SO MARKED.

17 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
18 JURY EXHIBIT 66.)

19 BY MR. FINKELSTEIN:

20 Q. LET'S TAKE A LOOK AT ONE OF THE LETTERS. CAN YOU  
21 TELL US WHAT THOSE LETTERS ARE?

22 A. THIS IS A LETTER THAT I SENT TO ALL OF THE CITY  
23 COUNCILMEMBERS.

24 Q. NOW, IF YOU LOOK AT 66, WE DON'T HAVE COPIES OF ALL  
25 THE LETTERS TO ALL CITY COUNCILMEMBERS HERE.

26 A. WE GAVE YOU, YOU KNOW, WHAT WE HAD IN OUR FILES, BUT  
27 I CAN ATTEST THAT EVERYONE ON THE CITY COUNCIL GOT A COPY.

28 Q. VICE MAYOR DANDO GOT A COPY?

1           A.       YES.  EVERY ONE OF THEM, WILLIAMS AND THE OTHER  
2 MEMBERS.

3           Q.       THIS WAS A LETTER YOU PREPARED ON OCTOBER 6, 2000?

4           A.       I DIDN'T SEE THE DATE -- YES.

5           Q.       AND YOUR RECOLLECTION IS THAT THIS IDENTICAL LETTER  
6 WENT OUT TO EACH MEMBER OF THE CITY COUNCIL?

7           A.       YES, SIR.

8           Q.       THAT'S YOUR SIGNATURE ON THE BOTTOM?

9           A.       YES, SIR.

10          Q.       IN THIS LETTER YOU'RE REQUESTING WHAT?

11          A.       I AM REQUESTING THAT THE ACTION OF THE BOARD, OF THE  
12 COUNCIL, I'M SORRY, BE POSTPONED, BECAUSE I FELT THAT THE WAY  
13 THAT THE MAYOR WAS GOING TO SUBMIT THIS PROPOSAL TO THE CITY  
14 COUNCIL DID NOT ADDRESS MY CONCERNS CONCERNING, YOU KNOW, THE  
15 JOBS FOR MY MEMBERS AND EVERYTHING I HAVE RELATED TO YOU THIS  
16 MORNING.  AND I WAS ASKING THEM TO POSTPONE THE VOTE UNTIL  
17 THEY HELPED ME TO ASCERTAIN, YOU KNOW, ALL OF MY CONCERNS WERE  
18 GOING TO BE RESOLVED.

19          Q.       WHY DIDN'T YOU SEND THIS LETTER TO THE COUNCILMEMBERS  
20 SOONER?

21          A.       BECAUSE I WAS WORKING ON IT ON A VERBAL BASIS, I WAS  
22 ON A VERBAL BASIS.  I KEPT THEM ADVISED, AND LARRY DAUGHERTY  
23 AND JIM FURGAS FROM STAFF, MY LAWYER, THE CITY ATTORNEY, UNDER  
24 MY DIRECTION WE'RE MEETING WITH EVERYBODY.

25                    THE REASON YOU SEE THE LETTER IS I FINALLY WANTED TO  
26 PUT IT IN WRITING, YOU KNOW, THE CONCERNS.  I SAID WE BEGAN TO  
27 SOUND LIKE A BROKEN RECORD.  WE KEPT TALKING TO EVERYBODY.

28          Q.       SO THAT'S THE REASON YOU DIDN'T WRITE EARLIER,

1 BECAUSE YOU HAD CONVERSATIONS WITH PEOPLE?

2 A. YES.

3 Q. IS THAT THE ONLY REASON?

4 A. UH -- YEAH. I MEAN, YOU KNOW, I ALWAYS KEPT THE  
5 FAITH THAT EVENTUALLY THEY WERE GOING TO HELP ME, AND FINALLY  
6 I FELT THAT, YOU KNOW, THAT PARTICULAR PERIOD THAT THE MAYOR,  
7 YOU KNOW, THE MAYOR WANTED TO HAVE A CONTRACT CONCLUDED. THAT  
8 WAS MY OPINION, YOU KNOW, CONCLUDED WITH THE VENDORS, AND HE  
9 TOOK THAT AS HIS MAIN RESPONSIBILITY. BUT AT THE SAME TIME,  
10 THE MAYOR'S MAIN RESPONSIBILITIES WERE THE WORKERS. I FELT I  
11 SHOULD PUT IN WRITING TO THE CITY COUNCIL THAT I WAS STILL  
12 HAVING THESE PROBLEMS EVEN THOUGH, YOU KNOW, THE MAYOR AND HIS  
13 STAFF WERE TRYING TO HELP ME, BUT I DIDN'T SEE THAT IT WAS  
14 CONCLUDED.

15 Q. ISN'T THE REAL REASON YOU DIDN'T WRITE THE  
16 COUNCIL MEMBERS EARLIER IS BECAUSE YOU WERE UNDER THE  
17 IMPRESSION THAT THE MAYOR WAS GOING TO POSTPONE THIS DECISION?

18 A. WHAT?

19 Q. ISN'T THE REAL REASON THAT YOU DIDN'T WRITE TO THE  
20 COUNCIL MEMBERS AND ASK FOR POSTPONEMENT EARLIER BECAUSE YOU  
21 WERE UNDER THE IMPRESSION THAT THE MAYOR WAS GOING TO POSTPONE  
22 THIS DECISION?

23 A. I DON'T KNOW THAT.

24 Q. I'M SORRY?

25 A. I SAID I DON'T KNOW IF HE WAS GOING TO POSTPONE IT OR  
26 NOT. I MEAN, IN MY OPINION, I THOUGHT AT THAT TIME HE WAS  
27 GOING TO GO THROUGH WITH IT.

28 Q. YOU THOUGHT HE WAS GOING TO GO THROUGH WITH IT?

SUE HERFURTH, CSR #9645

513

1 A. WITH THE TERMS IN THE CONTRACT, WITHOUT ADDRESSING MY  
2 CONCERNS.

3 Q. YOU DIDN'T THINK HE WAS GOING TO POSTPONE IT AT SOME  
4 POINT?

5 A. ON THAT PARTICULAR DAY, ON THE DATE OF THAT LETTER, I  
6 DIDN'T HAVE THAT IMPRESSION.

7 Q. HOW ABOUT THE DAY BEFORE OR THE DAY AFTER?

8 A. NO. I DIDN'T REACH MY CONCLUSION AFTER -- YOU SAW  
9 THE LETTER I SENT TO THE MAYOR, I THINK IT WAS THE FIFTH OR  
10 SIXTH, OR THE SAME DATE. AND THEN I JUST TOOK IT UPON MYSELF  
11 IN TALKING TO MY ATTORNEY AND ALSO THE OTHER REPRESENTATIVES  
12 OF LOCAL 350, I WAS AFRAID IT WAS GOING TO GO THROUGH WITHOUT  
13 RESOLVING MY CONCERNS.

14 Q. SO BEFORE YOU WROTE THIS LETTER YOU NEVER FELT AT ANY  
15 POINT THAT THE MAYOR WOULD BE WILLING TO POSTPONE THIS VOTE  
16 UNTIL YOUR ISSUE WAS RESOLVED?

17 A. NO, SIR.

18 Q. OKAY. LET'S LOOK AT SOME MORE OF THIS LETTER. LET'S  
19 LOOK AT THE LAST PARAGRAPH OF THE LETTER. HERE IS A SENTENCE  
20 THAT READS:

21 "I DID NOT WRITE TO YOU EARLIER BECAUSE I HAD REASON  
22 TO BELIEVE THAT MAYOR GONZALES WOULD NOT SUBMIT AN ILLEGAL  
23 PROPOSAL TO THE COUNCIL FOR APPROVAL. "

24 ARE THOSE WORDS IN THE LETTER?

25 A. YES.

26 Q. OKAY. ARE THOSE WORDS CORRECT?  
27 A. YES.  
28 Q. SO ISN'T THAT THE REASON YOU DIDN'T WRITE TO THE

SUE HERFURTH, CSR #9645

514

1 COUNCILMEMBERS SOONER?

2 A. SIR, I THINK I ANSWERED THAT. I SAID WHEN I TALKED  
3 TO THE COUNCIL I HAD THE IMPRESSION HE WAS GOING TO GO THROUGH  
4 WITH IT, THAT HE WAS GOING TO SUBMIT IT THE WAY HE HAD IT  
5 WITHOUT ADDRESSING MY CONCERNS.

6 Q. BUT I ASKED YOU WHY YOU DIDN'T WRITE THE  
7 COUNCILMEMBERS EARLIER, AND WHETHER OR NOT THAT WAS RELATED TO  
8 YOUR BELIEF, EARLIER BELIEF THAT THE MAYOR WAS NOT GOING TO GO  
9 THROUGH WITH IT UNTIL THE ISSUE WAS RESOLVED, AND YOU SAID  
10 THAT WAS NOT THE REASON. AND NOW WE'RE LOOKING AT YOUR WORDS  
11 IN THE LETTER, WHEN YOU TELL THE COUNCILMEMBERS, "I DID NOT  
12 WRITE TO YOU EARLIER BECAUSE I HAD REASON TO BELIEVE THAT  
13 MAYOR GONZALES WOULD NOT SUBMIT AN ILLEGAL PROPOSAL TO THE  
14 COUNCIL FOR APPROVAL."

15 A. OKAY. AND YOUR QUESTION IS?

16 Q. ARE THOSE WORDS TRUE? IS THAT WHAT YOU SAID IN THE  
17 LETTER, WAS THAT THE REASON YOU DIDN'T WRITE TO THE  
18 COUNCILMEMBERS EARLIER?

19 A. YEAH. AND I EXPLAINED THAT BECAUSE I WAS ALSO  
20 TALKING TO THEM VERBALLY ALL ALONG, IF YOU ALLOW ME TO EXPAND  
21 ON MY ANSWER.

22 Q. GO AHEAD.

23 A. THIS IS A LONG PROCESS; YOU DON'T KNOW FROM DAY TO

24 DAY WHAT'S GOING TO HAPPEN. YOU KEEP NEGOTIATING, LOBBYING,  
25 TALKING TO PEOPLE. SOME DAYS YOU GET ONE IMPRESSION, AND THE  
26 FOLLOWING DAY YOU MAY HAVE ANOTHER IMPRESSION, SO THERE IS NO  
27 OBSCURE REASON WHY I DIDN'T WRITE TO THEM BEFORE, I KEPT THEM  
28 CONTINUOUSLY INFORMED. I ALSO USED THE SERVICES OF THE CITY

SUE HERFURTH, CSR #9645

515

1 COUNCIL, AMY DEAN, SECRETARY-TREASURER AT THAT TIME OF THE  
2 SAN JOSE LABOR COUNCIL, AND THEY ALSO HELPED ME MAINTAINING TO  
3 KEEP THE COUNCIL INFORMED. AND I WAS, I ALWAYS HAD THE HOPE  
4 EVENTUALLY IT WAS GOING TO TAKE PLACE.

5 AND UNTIL I STARTED SEEING IT GOT LATE, I SAW IT WAS  
6 GOING BEFORE THE CITY COUNCIL AND, YOU KNOW, I WAS NOT  
7 SATISFIED, YOU KNOW, WITH THE WAY IT WAS GOING TO BE  
8 PRESENTED. THAT'S WHY I WROTE.

9 Q. WHY DID YOU TELL THE COUNCILMEMBERS THAT YOU DIDN'T  
10 WRITE TO THEM EARLIER BECAUSE YOU HAD REASON TO BELIEVE THAT  
11 MAYOR GONZALES WOULD NOT SUBMIT AN ILLEGAL PROPOSAL TO THE  
12 COUNCIL FOR APPROVAL?

13 A. BECAUSE I HAD ASSURANCES FROM PEOPLE LIKE AMY. AMY  
14 DEAN AND OTHER PEOPLE ASSURED ME, THAT I HAVE TO BE PATIENT,  
15 BECAUSE I KEPT PUSHING. GIVE IT TIME, IT'S GOING TO WORK,  
16 IT'S GOING TO WORK, WE'RE WORKING ON IT. IT'S GOING TO BE  
17 RESOLVED.

18 AND WHEN I SAW THAT, WE JUST KEPT TALKING AND  
19 TALKING, I DECIDED TO PUT IT IN WRITING SO THAT THE  
20 COUNCILMEMBERS WILL KNOW THAT THIS WAS NOT A RESOLVED  
21 MATTER.

22 Q. AT SOME POINT BEFORE YOU WROTE THE LETTER, DID YOU  
23 HAVE REASON TO BELIEVE THE MAYOR WOULD NOT PUT A PROPOSAL TO  
24 THE COUNCIL THAT YOU THOUGHT WAS ILLEGAL?

25 A. I REALLY, REALLY DON'T UNDERSTAND YOUR QUESTION.

26 Q. OKAY. CAN YOU SEE THE LETTER OF OCTOBER 6 FROM WHERE  
27 YOU ARE?

28 A. YES, SIR.

SUE HERFURTH, CSR #9645

516

1 Q. CAN YOU SEE THE SENTENCE THAT READS, "I DID NOT WRITE  
2 TO YOU EARLIER BECAUSE I HAD REASON TO BELIEVE THAT MAYOR  
3 GONZALES WOULD NOT SUBMIT AN ILLEGAL PROPOSAL TO THE COUNCIL  
4 FOR APPROVAL. "

5 DO YOU SEE THAT?

6 A. YES, SIR.

7 Q. WHAT REASON DID YOU HAVE TO BELIEVE THAT?

8 A. GOOD FAITH.

9 Q. WHAT WAS THAT?

10 A. I HAD FAITH THAT EVENTUALLY, WITH THE HELP OF THE  
11 CITY COUNCIL, PEOPLE WOULD CONVINCED THE MAYOR TO SEND A  
12 PROPOSAL THAT WILL MEET THE NEEDS OF MY WORKERS.

13 Q. WELL, WHAT HAPPENED ON OCTOBER 6 TO CHANGE YOUR  
14 BELIEF?

15 A. THAT, WELL, I TOLD YOU EARLIER THERE WAS, I HAD THE  
16 IMPRESSION FROM THE MAYOR THAT HE FELT THAT THIS WAS A LABOR  
17 DISPUTE BETWEEN TWO UNIONS, BETWEEN LONGSHOREMEN AND  
18 TEAMSTERS, AND THAT WE SHOULD GO SIT DOWN AND RESOLVE THIS.  
19 THAT IT WAS TWO UNIONS, AND HE BELIEVES IN LABOR, HE WANTED US

20 TO RESOLVE IT. AND I GOT REALLY CONCERNED AFTER THAT  
21 CONVERSATION. OH, MY GOD, THIS GUY IS GOING TO COME FROM  
22 OAKLAND WITH HIS WORKERS AND MORE LIKELY IS GOING TO BE  
23 APPROVED.

24 THAT WAS MY CONCERN, YOU KNOW, BY TALKING TO HIM  
25 THAT DAY. I GOT THE IMPRESSION THAT, YOU KNOW, ALL THAT I  
26 NEEDED, THE PROTECTION TO MAKE SURE THE WORKERS FROM MY LOCAL,  
27 WHETHER THEY HAD TEAMSTER REPRESENTATION OR NOT, THAT THEY  
28 WERE GOING TO GET THEIR JOBS. THAT'S HUMAN NATURE. I DIDN'T

SUE HERFURTH, CSR #9645

517

1 GET THE FEELING THAT HE WAS GOING TO -- I SAW THAT, YOU KNOW,  
2 THAT THEY WERE READY TO PROPOSE A RECOMMENDATION TO THE CITY  
3 COUNCIL THAT DID NOT MEET MY NEEDS.

4 Q. YOU SAID, FROM TALKING TO HIM THAT DAY. WERE YOU  
5 REFERRING TO TALKING TO THE MAYOR THAT DAY?

6 A. THE MAYOR AND HIS STAFF AND SO ON.

7 Q. WHEN YOU SAID THAT DAY, DID YOU MEAN OCTOBER 6, 2000?

8 A. THE DATE I SENT THE LETTER TO THE MAYOR.

9 Q. OCTOBER 6, 2000?

10 A. YEAH. BASED ON MY LETTER, YOU KNOW, IT WAS -- IT WAS  
11 AFTER A MEETING OR ON THE SAME DAY, I REALLY DON'T RECALL.  
12 THE ONLY THING I'M TELLING YOU TODAY IS THAT I DIDN'T BELIEVE  
13 THAT THE PROPOSAL TO THE CITY COUNCIL FOR APPROVAL DID NOT  
14 CONTAIN THE ASSURANCES THAT I NEEDED TO PROTECT MY JOBS.

15 Q. SO THIS MEETING WITH THE MAYOR WAS THIS, YOU BELIEVE  
16 IT WAS EARLIER ON OCTOBER --

17 A. IT COULD HAVE BEEN, COULD HAVE BEEN.

- 18 Q. YOU NEED TO LET ME FINISH.
- 19 A. SORRY.
- 20 Q. DO YOU BELIEVE IT TOOK PLACE EARLIER THAT SAME DAY,  
21 OCTOBER 6, 2000?
- 22 A. I THINK THIS MORNING I ATTESTED TO THAT. I SAID IT  
23 COULD HAVE BEEN A DAY BEFORE, A WEEK BEFORE. I TOLD YOU THAT  
24 IT COULD HAVE BEEN THAT I MET WITH HIM ON FRIDAY AND THREE  
25 DAYS LATER I SENT THE LETTER. I DON'T RECALL.
- 26 Q. SO YOU DON'T RECALL WHETHER YOU MET WITH THE MAYOR AT  
27 CITY HALL ON OCTOBER 6, 2000?
- 28 A. I DON'T RECALL.

SUE HERFURTH, CSR #9645

518

- 1 Q. GIVE US A MOMENT.
- 2 A. YES, SIR.
- 3 Q. LET ME SHOW YOU EXHIBIT 13, WHAT APPEARS TO BE AN  
4 ENTRY FROM THE MAYOR'S CALENDAR.
- 5 A. OKAY.
- 6 Q. THE ENTRY REFERS TO A 1:30 MEETING ON OCTOBER 6,  
7 2000.
- 8 A. OKAY.
- 9 Q. AND REFERS TO A MEETING WITH REPRESENTATIVES OF  
10 NORCAL AND OTHERS, DO YOU SEE THAT?
- 11 A. YES, SIR.
- 12 Q. HAVING LOOKED AT THAT CALENDAR ENTRY, DOES THAT JOG  
13 YOUR MEMORY AT ALL ABOUT WHETHER YOU MET WITH THE MAYOR ON  
14 THAT DAY?
- 15 A. I WAS NOT AT THAT MEETING.

- 16 Q. YOU WERE NOT AT THAT MEETING?
- 17 A. YES.
- 18 Q. OKAY.
- 19 A. OKAY.
- 20 Q. THAT WAS GOING TO BE MY NEXT QUESTION. SO IF THE
- 21 MAYOR DID MEET WITH THE NORCAL PEOPLE ON OCTOBER 6, THAT WAS
- 22 NOT WITH YOU?
- 23 A. NO, NOT THAT I RECALL.
- 24 Q. OKAY. NOW, YOU TOLD US THAT YOU SPOKE WITH NORCAL
- 25 REPRESENTATIVES ABOUT YOUR PROBLEM, CORRECT?
- 26 A. YES, SIR.
- 27 Q. YOU SPOKE WITH THE MAYOR, CORRECT?
- 28 A. YES, SIR.

SUE HERFURTH, CSR #9645

519

- 1 Q. YOU SPOKE WITH CITY COUNCIL MEMBERS?
- 2 A. YES, SIR.
- 3 Q. WHICH COUNCIL MEMBERS?
- 4 A. I WOULD SAFELY SAY, BETWEEN ME AND MY STAFF --
- 5 Q. LET'S START WITH YOU.
- 6 A. MET WITH A FEW OF THEM. MORE THAN THREE, MORE THAN
- 7 FOUR.
- 8 Q. WHICH ONES?
- 9 A. I MET WITH COUNCILMAN SHIRAKAWA, MET WITH PAT DANDO.
- 10 Q. THE VICE MAYOR?
- 11 A. YES, AND WITH CINDY CHAVEZ. I MET WITH JOHN
- 12 DIQUISTO. I MET WITH LINDA LEZOTTE, AND, I DON'T RECALL, I
- 13 MET WITH A FEW OF THEM.

14 Q. ALL RIGHT. DID YOU HAVE ANY MEETINGS WITH  
15 REPRESENTATIVES OF CWS ABOUT YOUR ISSUES PRIOR TO THE FIRST  
16 COUNCIL VOTE?  
17 A. UH -- PROBABLY.  
18 Q. I DON'T WANT YOU TO GUESS. SAY I DON'T REMEMBER IF  
19 YOU REALLY DON'T REMEMBER THEN --  
20 A. PROBABLY, YES.  
21 Q. WOULD THAT BE WITH DAVID DUONG?  
22 A. OR HIS BROTHER.  
23 Q. WHAT'S HIS NAME?  
24 A. I DON'T REMEMBER.  
25 Q. WHERE DID MEETINGS TAKE PLACE?  
26 A. CITY HALL, SOMETIMES.  
27 Q. WELL, WHAT WAS THE OCCASION FOR MEETING WITH THEM AT  
28 CITY HALL?

SUE HERFURTH, CSR #9645

520

1 A. SOMETIMES THERE WERE HEARINGS, YOU KNOW, OR WE  
2 HAPPENED TO BE IN THE VICINITY.  
3 Q. WHAT HEARINGS?  
4 A. HEARINGS, YOU KNOW, I GUESS THERE WERE SOME MEETINGS,  
5 PRELIMINARY MEETINGS BEFORE THE FINAL DOCUMENT WAS PUT  
6 TOGETHER WITH CARL MOSHER AND HIS OFFICE.  
7 Q. LIKE FINAL DOCUMENTS ON THE RFP?  
8 A. YEAH. SOMETIMES I WOULD BE THERE. EVERY TIME I HAD  
9 AN OPPORTUNITY TO SPEAK TO THEM, I DID. I RECALL I TALKED TO  
10 DAVID THE DAY THAT HE SHOWED UP WITH THE REPRESENTATIVE FROM  
11 THE LONGSHOREMEN'S UNION.

- 12 Q. WHAT DAY WAS THAT?
- 13 A. I DON'T RECALL.
- 14 Q. WHERE WAS THAT?
- 15 A. CITY HALL.
- 16 Q. WHAT WAS THE OCCASION?
- 17 A. HE CAME AND INTRODUCED HIM TO THE CITY COUNCIL.
- 18 Q. THAT WAS ON THE OCTOBER 10 VOTE?
- 19 A. YEAH. WELL, I MET WITH THEM VARIOUS OCCASIONS.
- 20 Q. I WANT TO FOCUS --
- 21 A. I DON'T RECALL THE EXACT DATES.
- 22 Q. SO LET'S SEE IF WE CAN ESTABLISH SOME MILEPOSTS, SOME
- 23 GUIDELINES.
- 24 A. OKAY.
- 25 Q. THERE WAS A VOTE ON OCTOBER 10, I BELIEVE, BY THE
- 26 CITY COUNCIL; THAT WAS THE FIRST VOTE SELECTING THE VENDORS,
- 27 RIGHT?
- 28 A. PROBABLY.

SUE HERFURTH, CSR #9645

521

- 1 Q. BEFORE THAT FIRST VOTE, DID YOU HAVE ANY MEETINGS
- 2 WITH CWS?
- 3 A. YES, OCCASIONALLY.
- 4 Q. AND WOULD THAT INCLUDE DAVID DUONG OR HIS BROTHER?
- 5 A. DAVID DUONG, YES.
- 6 Q. IT'S D-U-O-N-G?
- 7 A. D-U-O-N-G.
- 8 Q. DID YOU EVER TELL DAVID DUONG THAT IF HE DIDN'T MEET
- 9 YOUR DEMANDS, YOU WERE GOING TO LOBBY AGAINST THE AWARD OF THE

10 CONTRACT TO NORCAL?

11 A. WHAT WAS THE LAST WORD?

12 Q. I'LL REPEAT THE WHOLE QUESTION. DID YOU EVER TELL  
13 DAVID DUONG OR HIS BROTHER, IN ANY OF THE MEETINGS BEFORE THE  
14 OCTOBER 10 COUNCIL VOTE, THAT IF THEY DID NOT MEET YOUR  
15 DEMANDS, THAT YOU WERE GOING TO LOBBY AGAINST THE SELECTION OF  
16 NORCAL BY THE CITY COUNCIL?

17 A. I DO RECALL TELLING HIM IF HE DIDN'T HIRE MY MEMBERS  
18 THAT WERE ENTITLED TO THEIR JOBS, THAT I WAS GOING TO NOT ONLY  
19 LOBBY AGAINST THEM, BUT ALSO NORCAL.

20 Q. OKAY. WHO DID YOU TELL THAT TO?

21 A. I TOLD THAT TO NORCAL, AND PROBABLY TO DAVID TOO.

22 Q. OKAY, AND WHEN DID YOU TELL THAT TO DAVID?

23 A. I DON'T RECALL EXACTLY.

24 Q. WHERE DID YOU TELL IT TO HIM?

25 A. NORCAL --

26 Q. NO, DAVID.

27 A. PROBABLY WHEN I SAW HIM. I DON'T HAVE ANY COLLECTIVE  
28 BARGAINING AGREEMENTS WITH HIM, SO I SAW HIM OCCASIONALLY.

SUE HERFURTH, CSR #9645

522

1 Q. OKAY. LET'S MARK ANOTHER EXHIBIT. LET'S MARK AS  
2 EXHIBIT 67 AN OCTOBER 6, 2000 LETTER FROM ROBERT MORALES TO  
3 AMY DEAN. CAN YOU SEE THAT FROM WHERE YOU ARE?

4 A. YES, SIR.

5 Q. CAN YOU TELL US -- WAIT A MINUTE.

6 THE FOREMAN: SO MARKED.

7 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND

8 JURY EXHIBIT 67.)  
9 BY MR. FINKELSTEIN:  
10 Q. CAN YOU TELL US IF YOU RECOGNIZE THAT DOCUMENT?  
11 A. OKAY.  
12 Q. DO YOU RECOGNIZE IT?  
13 A. YES, SIR.  
14 Q. WHAT IS IT?  
15 A. IT'S A MEMO TO AMY DEAN, THE EXECUTIVE  
16 SECRETARY-TREASURER OF THE SANTA CLARA LABOR COUNCIL.  
17 Q. OKAY.  
18 A. ADVISING HER OF MY CONCERN THAT THE MAYOR WAS GOING  
19 TO PRESENT THE CONTRACTS TO, THE RECOMMENDATION TO THE CITY  
20 COUNCIL WITH MY ISSUES STILL UNRESOLVED, AND I WAS AFRAID THAT  
21 IF IT GOT VOTED IN AND WE DIDN'T ADDRESS THE ISSUES, THAT OUR  
22 CONCERNS, THAT WE WERE GOING TO HAVE A PROBLEM LATER. AND,  
23 YOU KNOW, APPARENTLY HE HAD CHANGED HIS MIND, YOU KNOW, TO THE  
24 PRIOR DATE HE HAD ASSURED ME MY ISSUES WERE GOING TO BE  
25 RESOLVED, PEOPLE WERE GOING GET HIRED; I JUST DIDN'T FEEL  
26 COMFORTABLE UNLESS THEY WERE TAKEN CARE OF PRIOR TO THE  
27 CONTRACT BEING INTRODUCED.  
28 Q. DID YOU PREPARE THIS LETTER?

SUE HERFURTH, CSR #9645

523

1 A. YES, SIR.  
2 Q. ON OCTOBER 6, 2000?  
3 A. YES, SIR.  
4 Q. AND THAT'S YOUR SIGNATURE AT THE BOTTOM OF THE  
5 LETTER?

6 A. YES, SIR.

7 Q. WHEN YOU MAKE REFERENCE IN THE LETTER AND SAY, "I

8 GUESS HE CHANGED HIS MIND," WHO IS THE "HE" THAT YOU'RE

9 REFERRING TO?

10 A. THE MAYOR.

11 Q. WHEN YOU SAY HE CHANGED HIS MIND, IN WHAT WAY DID HE

12 CHANGE HIS MIND?

13 A. HE TOLD ME NOT TO BE CONCERNED, THAT THE WORKERS WERE

14 GOING TO BE HIRED, YOU KNOW, BY CWS. THAT THEY WERE NOT GOING

15 TO BRING THEIR OWN WORKERS, THE PEOPLE I HAD WORKING FOR WASTE

16 MANAGEMENT, THAT THEY ARE GOING TO BE THE ONES TO DO THE WORK.

17 AND I EXPLAINED TO THE MAYOR THAT I HAD NO ASSURANCES FROM CWS

18 AND NORCAL WITH THE EXCEPTION OF THE DRIVERS AND MECHANICS,

19 THAT IN FACT THEY WERE GOING TO HIRE THE --

20 Q. TEAMSTERS?

21 A. THE SORTERS. THAT WAS MY CONCERN.

22 Q. NOW, IN THE LETTER YOU TOLD AMY DEAN THAT MAYOR

23 GONZALES CALLED YOU ON THAT DATE AT 3:20 P. M.

24 A. YES.

25 Q. IS THAT TRUE?

26 A. I THINK SO.

27 Q. IS IT TRUE THAT MAYOR GONZALES CALLED YOU AT 3:20

28 P. M. ON OCTOBER 6, 2000?

SUE HERFURTH, CSR #9645

524

1 A. PROBABLY.

2 Q. WHY DO YOU SAY PROBABLY?

3 A. I'M SAYING YES.

4 Q. DO YOU HAVE ANY REASON TO BELIEVE WHAT YOU SAID IN  
5 THE LETTER TO AMY DEAN WAS NOT ACCURATE?

6 A. NO.

7 Q. THE LETTER WAS PREPARED ON THE SAME DATE OF THAT  
8 TELEPHONE CALL?

9 A. YES.

10 Q. I ASSUME IT WOULD BE FRESH IN YOUR RECOLLECTION AT  
11 THAT TIME?

12 A. I DIDN'T UNDERSTAND.

13 Q. AND I ASSUME IT WOULD BE FRESH IN YOUR RECOLLECTION  
14 AT THAT TIME, CORRECT?

15 A. YES, SIR.

16 Q. AND YOU WEREN'T TRYING TO MISLEAD MISS DEAN ABOUT  
17 ANYTHING IN THIS LETTER, WERE YOU?

18 A. NO, SIR.

19 Q. SO YOU HAVE NO REASON TO BELIEVE THAT YOUR STATEMENT  
20 IS INACCURATE WHEN IT SAYS THE MAYOR CALLED YOU AT 3:20 P.M.  
21 ON OCTOBER 6, 2000?

22 A. YES.

23 Q. WHAT DID HE TELL YOU IN THE PHONE CALL?

24 A. WHAT I TOLD YOU, YOU KNOW, A FEW TIMES.

25 Q. THAT HE WAS GOING TO GO AHEAD WITH THE VOTE?

26 A. THAT HE WAS GOING TO GO AHEAD WITH THE VOTE AND, YOU  
27 KNOW, IN MY OPINION, WHETHER I LIKED IT OR NOT, HE WAS GOING  
28 TO GO THROUGH WITH IT.

SUE HERFURTH, CSR #9645

525

1 I AGAIN REPEATED MY CONCERN, I HAD NO ASSURANCE FROM

2 THE NEW COMPANY COMING INTO TOWN, CWS, THAT THEY WERE GOING TO  
3 HIRE MY WORKERS. AND NORCAL, I HONESTLY DIDN'T TRUST THEM,  
4 AND I DIDN'T TRUST NORCAL BECAUSE THEY HAD BROUGHT IN THESE  
5 SUBCONTRACTORS AND, YOU KNOW, I WAS AFRAID THAT MY GUYS WERE  
6 GOING TO END UP IN LEFT FIELD WITHOUT JOBS.

7 Q. YOU DIDN'T THINK NORCAL WAS A TRUSTWORTHY EMPLOYER AT  
8 THIS POINT?

9 A. I WON'T SAY THAT.

10 Q. WHY ARE YOU TELLING US, THEN?

11 ON THIS OCCASION, ON THIS PARTICULAR MATTER I DID  
12 NOT. I DID NOT TRUST THEM IN THIS PARTICULAR MATTER, BUT I  
13 HAVE GOOD RELATIONS WITH THEM IN OTHER AREAS.

14 Q. LOOK. YOU HAD BEEN TALKING TO THE MAYOR A NUMBER OF  
15 TIMES BEFORE THIS OCTOBER 6 DATE ABOUT THIS ISSUE, RIGHT?

16 A. YES, SIR.

17 Q. AND YOU TRIED TO MAKE CLEAR TO THE MAYOR WHAT YOUR  
18 CONCERNS WERE, RIGHT?

19 A. THAT'S CORRECT.

20 Q. AND YOU HAVE KNOWN THE MAYOR FOR 15, 20 YEARS?

21 A. YES, SIR.

22 Q. AND YOU HAVE GIVEN HIM HELP IN VARIOUS CAMPAIGNS,  
23 RIGHT?

24 A. YES.

25 Q. YOUR UNION HAS?

26 A. YES, SIR.

27 Q. ARE YOU SUGGESTING THAT THE MAYOR DID NOT GIVE YOU  
28 ANY ASSURANCES THAT HE WOULD TAKE CARE OF THIS MATTER FOR YOU?

SUE HERFURTH, CSR #9645

1           A.       HE TRIED. HE TRIED TO GIVE ME ASSURANCES, BUT, YOU  
2       KNOW, MY RESPONSIBILITY, FIRST RESPONSIBILITY, IS TO MY  
3       MEMBERS.

4           Q.       I UNDERSTAND.

5           A.       I WANTED TO SEE IT IN WRITING.

6           Q.       OKAY. WHAT ASSURANCES DID THE MAYOR GIVE YOU?

7           A.       THE MAYOR TOLD ME THAT HE HAD DISCUSSED THIS WITH THE  
8       VENDORS AND THAT HE WAS GOING TO SEE TO IT THAT 43 OR SO  
9       EMPLOYEES WERE GOING TO RETAIN THEIR JOBS, THAT IN HIS OPINION  
10      MOST OF THEM HAD TO COMPLY WITH THE TERMS AND CONDITIONS OF  
11      THE RFP AND NOT TO BE CONCERNED, BUT I WAS.

12          Q.       OKAY. DID HE ALSO GIVE YOU ASSURANCES THAT THE  
13      VENDOR WAS GOING TO SEE TO IT THE TEAMSTERS WOULD REPRESENT  
14      THESE 43 MRF WORKERS?

15          A.       NO, HE DID NOT.

16          Q.       DID THE MAYOR TELL YOU THAT HE HAD TOLD THE  
17      VENDORS -- STRIKE THAT. DID THE MAYOR TELL YOU HE HAD TOLD  
18      NORCAL THAT THEY NEEDED TO GO WITH THE TEAMSTERS IF THEY  
19      WANTED TO GET THIS CONTRACT?

20          A.       NO. I REALLY HAD A MEMORANDUM OF UNDERSTANDING WITH  
21      NORCAL IN MY HANDS SIGNED BY THEM THAT THEY WOULD RECOGNIZE  
22      THE UNION AND THAT THEY WILL HIRE MY MEMBERS. SO HE DIDN'T  
23      NEED TO TELL ME THAT, I HAD A DOCUMENT.

24          Q.       ARE YOU SAYING THERE WAS NO OUTSTANDING ISSUE WITH  
25      THE MRF WORKERS?

26          A.       NO, NO, I SAID -- YOU ASKED ME ABOUT NORCAL. NORCAL,  
27      YES. THE UNRESOLVED ISSUE WAS WITH CWS. I HAD NO DOCUMENT  
28      SIGNED BY CWS THAT THEY WERE GOING TO HIRE MY MEMBERS, SO --

1 Q. DID THE MAYOR SUGGEST OR INDICATE TO YOU THAT HE HAD  
2 MADE THAT CLEAR TO NORCAL, WHO WAS THE PROPOSER IN THIS CASE,  
3 THAT CWS NEEDED TO GO WITH THE TEAMSTERS IF NORCAL HOPED TO  
4 GET THE CONTRACT?

5 A. NO, SIR.

6 Q. HE NEVER TOLD YOU THAT?

7 A. HE TOLD ME HE WAS GOING TO SEE TO IT AND THAT HE HAD  
8 TOLD NORCAL THEY WERE GOING TO HIRE MY MEMBERS.

9 Q. WHAT ABOUT THE TEAMSTER ISSUE?

10 A. THE TEAMSTER ISSUE, AS I EXPLAINED TO YOU BEFORE, HE  
11 FELT THAT IT WAS AN ISSUE BETWEEN THE LONGSHOREMEN AND I AND  
12 LOCAL 350.

13 Q. WHAT ABOUT THE EXISTING WAGES AND BENEFITS ISSUE,  
14 WHAT DID THE MAYOR SAY ABOUT THAT?

15 A. THE MAYOR ADVISED ME THAT STAFF WAS NOT GOING TO BE  
16 WORKING ON PREVAILING WAGES FOR THE MRF EMPLOYEES, THAT THEY  
17 WERE NOT GOING TO HAVE A PREVAILING WAGE, SO THAT'S ANOTHER  
18 THING THAT GAVE ME CONCERN.

19 Q. BUT YOU WANTED ASSURANCES THAT YOUR MRF WORKERS WOULD  
20 NOT HAVE TO TAKE A REDUCTION IN WAGES AND BENEFITS, RIGHT?

21 A. THAT'S CORRECT.

22 Q. SO, WHAT DID THE MAYOR SAY ABOUT THAT ISSUE?

23 A. I JUST EXPLAINED, HE SAID FOR DRIVERS AND MECHANICS  
24 THERE WAS PREVAILING WAGES THAT THE STAFF WAS GOING TO BE  
25 WORKING ON, BUT WHEN IT CAME TO THE SORTERS, THE LOWER  
26 CLASSIFICATION OF MRF, THEY WERE NOT GOING TO BE RECEIVING AT  
27 THAT PARTICULAR TIME NO PREVAILING WAGES; THAT'S ONE OF THE  
28 REASONS I GAVE THE ADDITIONAL CONCERN THAT I FELT THOSE WERE

1 UNRESOLVED ISSUES.

2 Q. SO THE MAYOR DIDN' T ADDRESS THAT ISSUE, THEN, IS WHAT  
3 YOU' RE SAYING?

4 A. THE MAYOR DID, THE MAYOR GAVE ME ASSURANCES THAT  
5 PEOPLE WERE GOING TO GET HIRED AND THAT THE RESOLUTION OF  
6 RETENTION WAS GOING TO HAVE TO BE DECIDED.

7 Q. LET' S LOOK SOME MORE AT THIS LETTER TO AMY DEAN OF  
8 OCTOBER 6, 2000. IN THAT LETTER, DO YOU SAY TO AMY DEAN, "I  
9 EXPLAINED TO HIM THAT AFTER IT' S VOTED IN THERE WILL BE NO  
10 CHANCE TO NEGOTIATE"?

11 A. YES.

12 Q. AND WHEN YOU SAY "I EXPLAINED TO HIM," WERE YOU  
13 REFERRING TO MAYOR GONZALES?

14 A. YES.

15 Q. AND WHEN YOU SAY "VOTED IN," ARE YOU REFERRING TO THE  
16 COUNCIL VOTE ON THE SELECTION OF VENDORS?

17 A. YES, SIR.

18 Q. WHY WOULD THERE BE NO CHANCE FOR YOU TO NEGOTIATE  
19 WITH A NEW EMPLOYER AFTER THE COUNCIL SELECTS THE VENDORS?

20 A. BECAUSE I DID NOT. I REPEAT, AGAIN, I DID NOT HAVE  
21 ANY DOCUMENT FROM CWS INTENDING ON THAT ISSUE THAT THEY WERE  
22 GOING TO SIT DOWN WITH ME AND NEGOTIATE. I MEAN, IT WAS  
23 SOMETHING, IT WAS GOING TO REMAIN IN LIMBO.

24 Q. ISN' T THE REAL REASON YOU SAID, TOLD AMY DEAN YOU  
25 HAVE NO CHANCE TO NEGOTIATE AFTER THE CONTRACT WAS VOTED IN IS  
26 BECAUSE YOUR LEVERAGE IN THIS MATTER WAS THREATENING TO LOBBY  
27 AGAINST THE CONTRACT, RIGHT?

28 A. I DIDN'T UNDERSTAND THAT.

SUE HERFURTH, CSR #9645

529

1 Q. YOU TOLD US THAT YOU TOLD NORCAL AND CWS THAT IF THEY  
2 DIDN'T ADDRESS YOUR NEEDS, YOUR ISSUES, YOU WERE GOING TO  
3 LOBBY AGAINST THE SELECTION OF NORCAL FOR THIS CONTRACT,  
4 RIGHT?

5 A. YES.

6 Q. ONCE THE COUNCIL VOTES AND SELECTS NORCAL, YOU CAN'T,  
7 THAT'S NO LONGER A VIABLE THREAT, IS IT?

8 A. THAT'S CORRECT.

9 Q. YOU CAN'T LOBBY AGAINST A CONTRACT THAT'S ALREADY  
10 BEEN AWARDED?

11 A. THAT'S CORRECT.

12 Q. THE REASON YOU MADE THAT STATEMENT TO AMY DEAN ON  
13 OCTOBER 6, FOUR DAYS BEFORE THE VOTE, IS BECAUSE YOU FELT ONCE  
14 THE CONTRACT WAS AWARDED, VENDORS WERE SELECTED, YOU WOULD NOT  
15 HAVE ANY LEVERAGE OVER THE VENDORS, OR YOUR LEVERAGE WOULD BE  
16 REDUCED.

17 A. IT WOULD BE REDUCED.

18 Q. OKAY, CORRECT?

19 A. I WOULD STILL HAVE LEVERAGE.

20 Q. WHAT LEVERAGE WOULD YOU HAVE?

21 A. THERE'S ALWAYS ECONOMIC ACTION.

22 Q. YOU MEAN STRIKES?

23 A. STRIKES.

24 Q. YOU THOUGHT YOU COULD HAVE THE DRIVERS STRIKE OVER  
25 THE ISSUE OF WHO REPRESENTS THE MRF WORKERS?

- 26 A. THAT' S CORRECT.  
27 Q. WOULDN' T THAT BE A SECONDARY BOYCOTT?  
28 A. NO, SIR.

SUE HERFURTH, CSR #9645

530

- 1 Q. WHY DO YOU SAY THAT?  
2 A. BECAUSE THE M. O. U. THAT I NEGOTIATED WITH NORCAL  
3 INCLUDED ALL EMPLOYEES IN THE GARBAGE COLLECTION AND RECYCLING  
4 INDUSTRY. IT DID NOT EXCLUDE THE MRF EMPLOYEES. ALL ALONG I  
5 FELT THAT NORCAL HAD A RESPONSIBILITY TO THE MRF EMPLOYEES.  
6 THAT THEY BROUGHT IN A SUBCONTRACTOR, THAT' S THEIR BUSINESS,  
7 BUT THEY STILL, IN MY OPINION, WERE THE NUMBER ONE RESPONSIBLE  
8 PARTY FOR THE MRF EMPLOYEES AND THEIR --  
9 Q. DID CWS SIGN THIS AGREEMENT WITH NORCAL?  
10 A. BEG YOUR PARDON?  
11 Q. DID CWS SIGN YOUR AGREEMENT WITH NORCAL?  
12 A. LATER ON --  
13 Q. NO, NO. THE ONE YOU' RE REFERRING TO.  
14 A. NO.  
15 Q. SO YOU THOUGHT YOU COULD ENTER INTO AN AGREEMENT WITH  
16 NORCAL THAT WOULD BIND CWS IN WHICH UNION THEY RECOGNIZED FOR  
17 CWS EMPLOYEES?  
18 A. WELL, THE MEMORANDUM OF UNDERSTANDING THAT WE SIGNED,  
19 WHICH YOU HAVE COPIES OF, DOESN' T ELABORATE THAT IT' S GOING TO  
20 BE, QUOTE, UNQUOTE, TEAMSTERS UNION REPRESENTATION. THE  
21 M. O. U. REFERS TO THE FACT THAT THEY ARE GOING TO PAY  
22 PREVAILING WAGES AND THEY WILL RETAIN THE EXISTING EMPLOYEES.  
23 IT ALSO STATES IN THE SAME M. O. U. IF I WAS TO HAVE

24 REPRESENTATION, THAT THE EMPLOYEE HAS A RIGHT UNDER THE M. O. U.  
25 TO DEMAND FROM ME PROOF THAT I REPRESENT THE EMPLOYEES. SO,  
26 IN FACT, THE M. O. U. DOES SAY I AM SIGNING A M. O. U. WITH  
27 BOB MORALES, I ASSURE HIM THEY ARE GOING TO BE TEAMSTER  
28 MEMBERS.

SUE HERFURTH, CSR #9645

531

1 Q. THANK YOU FOR THAT CLARIFICATION. MY POINT IS A  
2 DIFFERENT ONE. YOU MADE REFERENCE TO THE UNDERSTANDING YOU  
3 HAD WITH NORCAL. CWS WAS NOT A PARTY TO THAT AGREEMENT?

4 A. NOT AT THAT TIME.

5 Q. SO IS IT YOUR TESTIMONY THAT YOU FELT AN AGREEMENT  
6 YOU HAD WITH NORCAL COULD SOMEHOW OBLIGATE CWS IN SOME WAY?

7 A. NO. IT OBLIGATED NORCAL.

8 Q. BUT THE PROBLEM YOU HAD WAS WITH CWS.

9 A. I'M GOING TO, IF I CAN ANSWER MY QUESTION ANOTHER  
10 WAY, WE HAVE LABOR LAWYERS. DUANE BEESON HAPPENS TO BE THE  
11 DEAN OF LABOR LAWYERS IN THE STATE. ONE OF THE, YOU KNOW,  
12 MOST RECOGNIZED LABOR LAWYERS. THROUGH HIS ADVICE, IT WAS HIS  
13 POSITION AND HIS OPINION THAT NORCAL HAD A RESPONSIBILITY FOR  
14 THE ENTIRE SOLID WASTE AND RECYCLING DIVISION IN THE CITY, AND  
15 THAT INCLUDED ALL OF THE WORKERS, INCLUDING THE MRF EMPLOYEES,  
16 THEY HAVE LEGAL RESPONSIBILITY.

17 Q. WHEN YOU SAY INCLUDING THE MRF EMPLOYEES, DO YOU MEAN  
18 THE ONES THAT WOULD BE HIRED BY CWS IN THE FUTURE?

19 A. YES, SIR. OR NORCAL.

20 Q. BUT NORCAL IS NOT HIRING MRF WORKERS UNDER THIS  
21 ARRANGEMENT, ARE THEY?

22 A. I DIDN'T SAY THAT.  
23 Q. UNDER THIS CONTRACT WITH THE CITY, NORCAL DOESN'T  
24 HIRE ANY MRF WORKERS, DO THEY?  
25 A. YES, THEY DO.  
26 Q. WHO DO THEY HIRE?  
27 A. THEY HIRE EMPLOYEES. WHENEVER THEY NEED EMPLOYEES,  
28 THEY HIRE DIRECTLY.

SUE HERFURTH, CSR #9645

532

1 Q. BUT NORCAL IS NOT PROVIDING RECYCLING SERVICES TO THE  
2 CITY UNDER THIS AGREEMENT.  
3 A. THEY DO THE COLLECTION, THEY ARE THE ONE WHO DELIVER  
4 CWS THE MATERIALS TO BE RECYCLED.  
5 Q. RIGHT, BUT WE'RE NOT TALKING ABOUT DRIVERS, WE'RE  
6 TALKING ABOUT MRF WORKERS WHO WORK AT THE MRF FACILITIES,  
7 RIGHT?  
8 A. WITHOUT NORCAL, CWS TODAY WOULD NOT EXIST.  
9 Q. BUT THAT'S A DIFFERENT ISSUE. THE POINT IS YOUR  
10 PROBLEM HAD TO DO WITH THE MRF WORKERS THAT CWS HIRED IN THE  
11 FUTURE TO WORK ON SORTING THE RECYCLABLES IN SAN JOSE,  
12 CORRECT?  
13 A. YES.  
14 Q. NORCAL HAD NOTHING TO DO WITH THE HIRING OF THOSE  
15 WORKERS, DID THEY?  
16 A. YES, THEY DID.  
17 Q. WHAT DID THEY HAVE TO DO --  
18 A. I'LL EXPLAIN IT TO YOU AGAIN.  
19 Q. LET ME FINISH THE QUESTION. WHAT DID NORCAL HAVE TO

20 DO WITH THE HIRING OF CWS' S MRF WORKERS?

21 A. OKAY. THE ARRANGEMENT BETWEEN THE CITY OF SAN JOSE  
22 AND NORCAL CORPORATION WAS TO, QUOTE, UNQUOTE, TAKE CARE OF  
23 THE TWO DISTRICTS THAT THEY WERE AWARDED FOR THE COLLECTION OF  
24 SOLID WASTE AND RECYCLING OPERATIONS. IT DOESN' T SAY DRIVING  
25 OPERATIONS, IT SAYS ALL OPERATIONS. YOU HAVE A COPY OF THAT  
26 M. O. U. WE PROVIDED YOU WITH.

27 Q. I UNDERSTAND. NORCAL WAS AGREEING TO PROVIDE THE  
28 CITY WITH A SERVICE?

SUE HERFURTH, CSR #9645

533

1 A. FOR EVERYTHING.

2 Q. CORRECT.

3 A. AND THAT INCLUDED MRF EMPLOYEES. NOW THAT THEY  
4 BROUGHT ALONG SOMEBODY ELSE TO DO THE MRF WORK, THAT' S FINE,  
5 BUT IN THE MEANTIME OUR LAWYERS FELT THAT THEY STILL WERE THE  
6 MAIN PARTY RESPONSIBLE FOR ALL EMPLOYEES, INCLUDING MRF  
7 EMPLOYEES.

8 Q. YOUR POSITION WAS, AFTER CONSULTING WITH YOUR  
9 ATTORNEY, MR. BEESON, THAT IF YOU HAVE AN UNDERSTANDING OR  
10 AGREEMENT WITH A COMPANY, THAT IT' S BINDING ON ALL  
11 SUBCONTRACTORS OF THE COMPANY?

12 A. YES, SIR.

13 Q. YOU FELT CONFIDENT IN THAT POSITION?

14 A. YES.

15 Q. SO I ASSUME YOU COULD HAVE GONE TO COURT AND  
16 PREVAILED?

17 A. YOU KNOW, I FOLLOW THE LAWYER' S ADVICE.

18 Q. WHAT DO YOU MEAN?

19 A. WHEN MATTERS LIKE THAT COME ABOUT, WE DISCUSS THIS  
20 WITH OUR ATTORNEYS, AND IN THE COURSE OF LEGAL ANALYSIS THAT  
21 THEY PLACE IS BASED ON THEIR ADVICE. I HAVE GREAT CONFIDENCE  
22 IN MR. BEESON THAT HE WILL DO THE RIGHT THING FOR US.

23 Q. IF YOU HAD SUCH GREAT CONFIDENCE IN MR. BEESON, WHY  
24 DID YOU BOTHER THE MAYOR AND THE CITY COUNCIL WITH A PROBLEM  
25 MR. BEESON HAD SOLVED FOR YOU THROUGH LEGAL CHANNELS?

26 A. BECAUSE ONE OF THE SECTIONS OF THE RFP CALLS FOR  
27 LABOR PEACE, OKAY? AND I LIKE TO BE A GOOD CITIZEN,  
28 PARTICIPANT IN THE CITY OF SAN JOSE, AND IF I CAN DO MY JOB

SUE HERFURTH, CSR #9645

534

1 WITHOUT THE RESOURCE OF THE STRIKE IN THE CITY AND DISRUPTING  
2 SERVICE TO THE CITIZENS I'M AHEAD, BECAUSE THEN I WILL HAVE  
3 THE PUBLIC BEHIND ME AND MY MEMBERS, AND THAT'S THE GOAL.

4 Q. WHY DID YOU NEED TO STRIKE? YOU HAD A LEGAL REMEDY.

5 A. WHAT?

6 Q. WHY DO YOU HAVE TO RESORT TO A STRIKE? YOU HAVE A  
7 SATISFACTORY LEGAL REMEDY TO DEAL WITH THE PROBLEM. YOUR VIEW  
8 AND BASED ON THE ADVICE OF YOUR ATTORNEY, AS I UNDERSTAND IT,  
9 THAT NORCAL, YOU HAVE THAT MEMORANDUM OF UNDERSTANDING WITH  
10 NORCAL, AND THAT'S BINDING ON THAT SUBCONTRACTOR, CWS, THAT  
11 WAS NOT A PARTY TO THAT AGREEMENT. THAT'S YOUR LEGAL ADVICE,  
12 AND YOU FELT CONFIDENT IN IT, SO WHY DO YOU HAVE TO RESORT TO  
13 STRIKES OR OTHER ACTIONS TO ADDRESS THE ISSUE?

14 A. BECAUSE COLLECTIVE BARGAINING IN THE LAW, YOU KNOW,  
15 HAS GUIDELINES, AND THERE ARE ISSUES THAT YOU JUST CANNOT GO

16 TO COURT AND PAY \$35 TO HAVE A LAWSUIT. SOMETIMES THE COURTS  
17 WILL REVERSE THAT AND SEND IT BACK TO THE BARGAINING TABLE OR  
18 TO THE NLRB. THEREFORE, WE HAVE TO FOLLOW THE GUIDELINES.

19 Q. WELL, LET ME ASK ANOTHER QUESTION. YOU JUST GOT  
20 THROUGH ESPOUSING ON A LEGAL THEORY THAT YOUR AGREEMENT WITH  
21 NORCAL REQUIRED CWS TO ABIDE BY THE NORCAL AGREEMENT, RIGHT?

22 A. NO, I DIDN'T SAY THAT. I SAID THAT BECAUSE THE MAIN  
23 VENDOR FOR THESE CONTRACTS WITH THE CITY OF SAN JOSE, WITH  
24 NORCAL, I SAID THEY HAD THE SOLE RESPONSIBILITY TO ENSURE  
25 THAT, ONE, A CONTRACTOR, WHETHER CWS OR SOMEBODY ELSE, HAD THE  
26 OBLIGATION TO HIRE THE EMPLOYEES WHO HAD THOSE JOBS PRIOR TO  
27 NORCAL COMING INTO THE CITY.

28 Q. OH, SO IT WAS NORCAL'S OBLIGATION?

SUE HERFURTH, CSR #9645

535

1 A. IN MY OPINION, AT THAT TIME IT WAS.

2 Q. YOU HAD A COLLECTIVE BARGAINING AGREEMENT WITH  
3 NORCAL.

4 A. NOT FOR THAT GROUP.

5 Q. WHEN YOU FILED YOUR UNFAIR LABOR PRACTICE CHARGE WITH  
6 THE NATIONAL LABOR RELATIONS BOARD ON OCTOBER 5, 2000, DID YOU  
7 FILE IT AGAINST NORCAL OR CWS?

8 A. NO. BECAUSE --

9 Q. WHAT DO YOU MEAN, NO?

10 A. I DID NOT FILE IT.

11 Q. WAIT IT'S AN EITHER/OR QUESTION. WHEN YOU FILED YOUR  
12 UNFAIR LABOR PRACTICE CHARGE WITH THE NATIONAL LABOR RELATIONS  
13 BOARD OCTOBER 5, 2000, DID YOU FILE IT AGAINST NORCAL OR CWS?

14 A. CWS.

15 Q. WELL, UNDER YOUR THEORY, SHOULDN'T YOU HAVE FILED IT  
16 AGAINST NORCAL BECAUSE THEY HAD THE OBLIGATION TO MAKE SURE  
17 THEIR CONTRACTORS LIVED UP TO CERTAIN EXPECTATIONS?

18 A. NO, BECAUSE THE ISSUE THAT WAS BEFORE US WAS THAT  
19 HERE IT WAS AN EMPLOYER FOR CWS COMING WITH A TOP-DOWN  
20 AGREEMENT WITH THE LONGSHOREMEN'S UNION, WITHOUT HAVING  
21 EMPLOYEES IN THE CITY OR ANY MRF IN THE CITY OF SAN JOSE,  
22 WAVING A COLLECTIVE BARGAINING AGREEMENT THAT THEY ALREADY HAD  
23 AN AGREEMENT, A PRIVATE AGREEMENT BETWEEN CWS AND THE  
24 LONGSHOREMEN'S UNION, WHICH IN OUR EYES WAS ILLEGAL. THAT'S  
25 THE ISSUE WE'LL TAKE TO THE BOARD.

26 Q. YOU JUST TOLD US A MINUTE AGO THAT IT WAS NORCAL'S  
27 OBLIGATION TO MAKE SURE THAT ANY SUBCONTRACTOR THEY USED  
28 ABIDED BY THE LAW, RIGHT?

SUE HERFURTH, CSR #9645

536

1 A. ABIDED BY THE RFP.

2 Q. ABIDED BY THE RFP?

3 A. YES.

4 Q. AND YOU FELT THIS WAS A VIOLATION OF THE RFP, RIGHT?

5 A. CORRECT.

6 Q. SO WHY DIDN'T YOU BRING THE CHARGE AGAINST NORCAL?

7 A. BECAUSE, ON THE ADVICE OF COUNSEL THAT WE SHOULD FILE  
8 AN UNFAIR LABOR PRACTICE AGAINST CWS BECAUSE OF THEIR ILLEGAL  
9 TACTICS, COMING BEFORE THE CITY WITH AN ALREADY TOP-DOWN  
10 CONTRACT WITHOUT HAVING WORKERS IN THE CITY, WHICH IS A  
11 VIOLATION OF THE NATIONAL LABOR RELATIONS BOARD.

12 LOOK. WE'RE TRYING TO GET ANY HELP THAT WE COULD  
13 OBTAIN, AND THAT, FILING THE CHARGE, WE FELT THAT IT WILL  
14 FORCE THIS COMPANY TO SEE THAT WHAT THEY WERE DOING WAS  
15 ILLEGAL AND TO CORRECT THEIR WAYS, AND WE WERE SUCCESSFUL AT  
16 THE END.

17 Q. NOT THROUGH THE NLRB.

18 A. WELL, YOU COULD SAY THAT, BUT I GOT TO TELL YOU WE  
19 WERE SUCCESSFUL IN OBTAINING AN AGREEMENT WITH CWS.

20 Q. I AGREE, MR. MORALES, AND AT THE END OF THIS STORY  
21 YOU PULLED OFF A TREMENDOUS FEAT FOR YOUR MEMBERS. YOU GOT  
22 NORCAL AND CWS TO PAY NO LESS THAN THE EXISTING WAGES AND  
23 BENEFITS, YOU GOT THEM TO RECOGNIZE TEAMSTERS FOR YOUR MRF  
24 WORKERS, AND THE CITY SUBSIDIZED THAT RESULT, RIGHT?

25 A. WELL, I GUESS GOES TO THE RATES, AND I DON'T GET  
26 INVOLVED IN THAT.

27 Q. BUT YOU DID.

28 A. I DON'T GET INVOLVED AS TO HOW THE PAYMENT TO THE

SUE HERFURTH, CSR #9645

537

1 COMPANIES IS GOING TO BE, THAT'S NOT PART OF MY JOB.

2 Q. I'M JUST TRYING TO PAY YOU A COMPLIMENT. YOU  
3 ACCOMPLISHED A GREAT DEAL FOR YOUR MEMBERS.

4 A. THANK YOU, SIR.

5 Q. YOU GOT THEM SOMETHING THAT THEY WERE NOT ENTITLED TO  
6 UNDER THE RFP OR THE AGREEMENT?

7 A. AND YOU WANT ME TO ANSWER THAT?

8 Q. YEAH. YES OR NO.

9 A. YES.

10 Q. OKAY. SO MY QUESTION IS NOT WHY YOU DID THIS; NO ONE  
11 BLAMES YOU FOR BEING A COMPETENT ADVOCATE FOR YOUR MEMBERS.

12 MY QUESTION IS DIFFERENT. MY QUESTION IS, WASN'T  
13 YOUR POSITION WITH THE NLRB, WHERE YOU NAME CWS AS THE  
14 RESPONSIBLE EMPLOYER, INCONSISTENT WITH YOUR POSITION THAT YOU  
15 FELT IT WAS NORCAL'S OBLIGATION TO REMEDY THIS PROBLEM?

16 A. I FOLLOW LEGAL ADVICE.

17 Q. THAT'S YOUR ANSWER?

18 A. YES, SIR.

19 Q. DID YOU THINK IT WAS INCONSISTENT?

20 A. NO.

21 Q. WHY NOT?

22 A. I HAVE GREAT FAITH IN MY LABOR LAWYERS. IF THEY FELT  
23 A CHARGE WAS IMMINENT, BY ALL MEANS WE WENT AHEAD, AND IT  
24 PROVED TO BE SUCCESSFUL.

25 Q. IF YOU REALLY BELIEVE THAT NORCAL HAD THE PRIMARY  
26 OBLIGATION TO ADDRESS THESE ISSUES FOR ITS SUBCONTRACTOR, CWS,  
27 WHY WOULDN'T YOU NAME NORCAL IN THE CHARGE?

28 A. BECAUSE THAT WAS THE DECISION OF MY LAWYERS.

SUE HERFURTH, CSR #9645

538

1 Q. DID YOU EVER ASK YOUR LAWYER, HEY, WE'RE TAKING THE  
2 POSITION THAT IT'S NORCAL'S OBLIGATION TO DEAL WITH CWS AND  
3 THIS PROBLEM, BUT YET WITH THE NLRB WE ARE CHARGING CWS.

4 A. YOU KNOW, LOOK, I'M NOT A LAWYER. I FINISHED HIGH  
5 SCHOOL AND I WENT TO THE ARMY --

6 Q. MR. MORALES, MR. MORALES, I'M NOT SURE THAT ANY --  
7 THAT THAT'S CALLED FOR. NO ONE THINKS LESS OF YOU. YOU'RE A

8 VERY CAPABLE LABOR REPRESENTATIVE. YOU HAVE BEEN AROUND THE  
9 BLOCK A FEW TIMES, I'M SURE YOU ARE A VERY SKILLFUL  
10 NEGOTIATOR. PLEASE DON'T TRY TO BELITTLE YOUR QUALIFICATIONS  
11 IN THIS AREA.

12 A. THANK YOU.

13 Q. FINALLY, IN THIS LETTER YOU MAKE A REFERENCE TO  
14 HAVING TALKED TO CINDY CHAVEZ ABOUT POSTPONING THE HEARING ON  
15 OCTOBER 10.

16 A. YES, SIR.

17 Q. IS THAT TRUE YOU HAD TALKED TO CINDY CHAVEZ ABOUT  
18 POSTPONING IT?

19 A. YES, SIR.

20 Q. WHAT CAN YOU TELL US ABOUT THAT CONVERSATION,  
21 STARTING WITH WHERE IT TOOK PLACE?

22 A. I DON'T RECALL WHETHER IT WAS IN PERSON OR BY  
23 TELEPHONE, BUT I DID TALK TO HER, AND I EXPRESSED TO HER THE  
24 SAME CONCERN THAT I HAD EXPRESSED TO AMY DEAN, THAT, YOU KNOW,  
25 CONCERNING ALL THE PROBLEMS WITH THE MAYOR GOING TO THE CITY  
26 COUNCIL, AND SHE TOLD ME THAT SHE WAS NOT SURE WHETHER SHE  
27 COULD POSTPONE THE MEETING. SO I CAN TELL YOU, I WAS KIND OF  
28 DISAPPOINTED.

SUE HERFURTH, CSR #9645

539

1 Q. WHY DID YOU SEND A LETTER TO AMY DEAN?

2 A. BECAUSE AMY DEAN WAS HELPING US, YOU KNOW, BECAUSE WE  
3 BELONG TO THE LABOR COUNCIL, SHE WAS HELPING CONTINUOUSLY, AND  
4 I ALWAYS ADMIRER HER, I THOUGHT SHE HAD A TREMENDOUS  
5 RELATIONSHIP WITH EVERYBODY IN THE CITY, NOT ONLY WITH THE

6 CITY OFFICIALS, BUT BUSINESSES AND IN THE COMMUNITY AT LARGE.  
7 SO THROUGH THIS PROCESS, HER OFFICE WAS AGAIN VERY HELPFUL TO  
8 US.

9 Q. IS THE REASON YOU BROUGHT AMY DEAN INTO THIS ISSUE  
10 BECAUSE SHE THOUGHT SHE COULD HELP APPLY POLITICAL PRESSURE TO  
11 THE ELECTEDS TO HELP YOU ACCOMPLISH WHAT YOU NEEDED TO?

12 A. I FELT THAT SHE COULD LOBBY THE CITY COUNCIL.

13 Q. INCLUDING THE MAYOR?

14 A. PROBABLY THE MAYOR ALSO. HE'S A MEMBER OF THE CITY  
15 COUNCIL AND, YOU KNOW, SHE CAN PERSEVERE BETTER THAN ME.

16 Q. IN YOUR EXPERIENCE DO CANDIDATES FOR ELECTED OFFICE  
17 SEEK OUT THE SUPPORT OF THE SOUTH BAY LABOR COUNCIL?

18 A. YES, SIR.

19 Q. SOMETHING THEY VALUE IN THEIR CAMPAIGN?

20 A. YES, SIR, I HOPE SO.

21 Q. NOTHING WRONG WITH THAT.

22 MR. FINKELSTEIN: IT'S ALMOST 2:30. PERHAPS WE CAN  
23 TAKE A RECESS AT THIS TIME.

24 THE FOREMAN: I'LL REMIND YOU OF THE CONFIDENTIALITY  
25 ADMONITION.

26 THE WITNESS: YES, SIR.

27 (A BRIEF RECESS WAS TAKEN.)

28 BY MR. FINKELSTEIN:

SUE HERFURTH, CSR #9645

540

1 Q. MR. MORALES, YOU KNOW THAT YOU ARE STILL UNDER OATH?

2 A. YES, SIR.

3 Q. ON OCTOBER 10, 2000, DID THE CITY COUNCIL MEET AND

4 CONSIDER THE SELECTION OF VENDORS FOR THE RECYCLE PLUS  
5 CONTRACTS?

6 A. I THINK SO. ABOUT THE DATES I'M NOT TOO CLEAR.

7 Q. DO YOU RECOLLECT THAT IT WAS A FEW DAYS AFTER YOUR  
8 OCTOBER 6 LETTER?

9 A. YES.

10 Q. DID YOU ATTEND THE COUNCIL MEETING?

11 A. YES.

12 Q. DID YOU SPEAK AT THE CITY COUNCIL MEETING?

13 A. YES.

14 Q. DO YOU RECALL WHAT YOU SAID?

15 A. NO. I MAY HAVE A LITTLE RECOLLECTION, I DON'T KNOW  
16 IF BY THAT TIME I ALREADY HAD A MEMORANDUM OF UNDERSTANDING  
17 SIGNED BY CWS OR NOT, IN WHICH CASE, YOU KNOW, MY REPORT TO  
18 THE COUNCIL WOULD HAVE BEEN DIFFERENT.

19 Q. YOU DON'T HAVE MUCH OF A RECOLLECTION WHAT YOU SAID?

20 A. WELL, YOU KNOW, BECAUSE OF THAT, BECAUSE OF THAT  
21 EVENTUALLY CWS SIGNED THE MEMORANDUM OF UNDERSTANDING, I DON'T  
22 KNOW I STOOD UP AND EMBRACED THEM OR SAID SOMETHING AGAINST  
23 THEM.

24 Q. LET ME SEE IF I CAN ASK YOU SOME MORE DIRECTED  
25 QUESTIONS THAT HELP YOUR MEMORY.

26 A. OKAY.

27 Q. DID YOU TELL THE COUNCIL YOU HAD A GOOD RELATIONSHIP  
28 WITH NORCAL?

SUE HERFURTH, CSR #9645

541

1 A. YES.

2 Q. DID YOU TELL THEM THAT NORCAL WAS ONE OF YOUR BEST  
3 EMPLOYERS?

4 A. YES.

5 Q. DID YOU TELL THEM YOU HAD A BIG PROBLEM WITH THE  
6 SUBCONTRACTOR, CWS?

7 A. YES.

8 Q. AND DID YOU TELL THEM YOU HAD NO ASSURANCES THAT YOUR  
9 MEMBERS WERE GOING TO BE HIRED UNDER THE SAME TERMS AND  
10 CONDITIONS THAT THEY HAD WITH WASTE MANAGEMENT?

11 A. YES.

12 Q. DID YOU TELL THEM THAT THOSE INSURANCES WERE UP IN  
13 THE AIR?

14 A. YES.

15 Q. DID YOU TELL THE COUNCIL THAT IT WAS ILLEGAL FOR CWS  
16 TO BRING IN THE LONGSHOREMEN TO REPRESENT THE NEW MRF WORKERS  
17 AT THE NEW RECYCLING FACILITY IN SAN JOSE WHEN YOUR UNION  
18 REPRESENTED ALL THE MRF WORKERS IN SAN JOSE?

19 A. YES.

20 Q. IS IT TRUE THAT IN 2000, YOUR UNION REPRESENTED ALL  
21 THE MRF WORKERS SAN JOSE?

22 A. WITH WASTE MANAGEMENT, YES.

23 Q. BUT NOT WITH GREEN TEAM.

24 A. NO, SIR.

25 Q. THEY WERE REPRESENTED BY THE CARPENTERS?

26 A. THAT'S CORRECT.

27 Q. AND DID YOU TELL THE COUNCIL THAT YOU HAD FILED AN  
28 UNFAIR LABOR PRACTICE CHARGE WITH THE NATIONAL LABOR RELATIONS

SUE HERFURTH, CSR #9645

1 BOARD?

2 A. YES.

3 Q. AND DID YOU CONCLUDE BY TELLING THE COUNCIL THAT YOU  
4 HAD ORIGINALLY PLANNED ON ASKING THE COUNCIL TO DEFER ACTION  
5 ON THIS MATTER?

6 A. YES.

7 Q. BUT THAT AFTER LISTENING TO THE MAYOR AND HIS  
8 ASSURANCES, YOU WERE NOT GOING TO ASK FOR A POSTPONEMENT OF  
9 THE VOTE ON THE SELECTION OF CONTRACTORS?

10 A. YES, I GUESS.

11 Q. WELL, I DON'T WANT YOU TO GUESS.

12 A. I DON'T RECALL THAT.

13 Q. OKAY. LET US LOOK FOR A MOMENT. I HAPPEN TO HAVE A  
14 VIDEO OF THE MEETING.

15 A. GOOD.

16 Q. SO WHY DON'T WE TAKE A MOMENT, LET ME PLAY IT FOR  
17 YOU, AND SEE IF THAT HELPS YOUR MEMORY. OKAY?

18 A. YES, SIR.

19 COURT REPORTER: COUNSEL, WILL YOU STIPULATE THAT I  
20 DON'T NEED TO TAKE DOWN THE AUDIO?

21 MR. FINKELSTEIN: YES.

22 (PLAYING VIDEOTAPE.)

23 BY MR. FINKELSTEIN:

24 Q. MR. MORALES, HAVE YOU HAD A CHANCE TO VIEW THE VIDEO?

25 A. TODAY, YES.

26 Q. HAVING, DO YOU RECOGNIZE -- YOU ARE IN THE VIDEO, I  
27 TAKE IT?

28 A. YES.

1 Q. HAS IT REFRESHED YOUR RECOLLECTION THAT YOU TOLD THE  
2 COUNCIL THAT AFTER LISTENING TO THE MAYOR AND HIS ASSURANCES,  
3 YOU WERE NOT GOING TO ASK FOR A POSTPONEMENT OF THE VOTE ON  
4 THE SELECTION OF CONTRACTOR?

5 A. YES, SIR.

6 Q. WHAT ASSURANCES ARE YOU REFERRING TO?

7 A. WHAT THE MAYOR SAID DURING THE MEETING WHEN HE  
8 PRESENTED HIS PROPOSAL TO THE CITY COUNCIL AND THE PUBLIC AT  
9 LARGE. HE EXPRESSED THAT ALL OF THE WORKERS WILL BE  
10 PROTECTED. THERE ARE JOBS, THERE WILL BE NO PROBLEM, YOU  
11 KNOW, THAT THERE WILL BE LABOR PEACE, AND THAT ALL OF MY  
12 MEMBERS WERE GOING TO BE HIRED. SO I FELT THAT WAS ON THE  
13 RECORD AND THAT THE CITY COUNCIL WAS LISTENING TO IT AND  
14 EVERYBODY ELSE, THE PUBLIC.

15 I DECIDED, YOU KNOW, THAT I WAS AHEAD AND I SHOULD  
16 QUIT AND, YOU KNOW, I COULD ALWAYS BRING THAT UP, THAT, YOU  
17 KNOW, WHAT YOU JUST PRESENTED, THAT HE WENT ON THE RECORD AND  
18 SAID MY MEMBERS WERE GOING TO BE PROTECTED.

19 Q. DID THE MAYOR SAY AT THE CITY COUNCIL MEETING THAT  
20 YOUR MRF WORKERS AT WASTE MANAGEMENT WOULD NOT SUFFER A  
21 REDUCTION IN WAGES AND BENEFITS WHEN THEY WERE HIRED BY CWS?

22 A. NOT THAT I RECALL, NO.

23 Q. SO IT WASN'T THAT BIG AN ISSUE FOR YOU?

24 A. UH -- MY --

25 Q. WASN'T THAT A BIG ISSUE FOR YOU?

26 A. YES, BUT THE MAIN ISSUE WAS HIRING OF MEMBERS.

27 Q. BUT CWS WANTED TO HIRE THEM AS LONGSHOREMEN AT A  
28 SUBSTANTIALLY LOWER WAGE AND BENEFITS, RIGHT?

- 1 A. RIGHT.
- 2 Q. WHAT WAS THE DIFFERENCE AGAIN?
- 3 A. UH -- THE DIFFERENCE IN WHAT?
- 4 Q. WAGES AND BENEFITS.
- 5 A. WAGES WERE APPROXIMATELY \$3.80 PER HOUR.
- 6 Q. WHAT WERE THE TWO WAGES?
- 7 A. I THINK THAT PEOPLE IN OAKLAND THAT WERE WORKING FOR
- 8 CWS DOING THE SAME WORK WERE MAKING APPROXIMATELY \$7.00 AN
- 9 HOUR, AND MY WAGES AT THAT TIME WERE \$10.80 AN HOUR.
- 10 Q. SO THAT'S A 40, 50% DIFFERENCE IN HOURLY WAGE.
- 11 A. YES.
- 12 Q. THAT'S HUGE, RIGHT?
- 13 A. YES, SIR.
- 14 Q. AND BENEFITS?
- 15 A. BENEFITS WERE ALSO A PROBLEM, DEPENDS WHO YOU TALK
- 16 TO. IN OAKLAND, THROUGH MY SOURCES WITH OTHER TEAMSTER LOCALS
- 17 THERE, I HEARD THAT THE PEOPLE WERE MAKING \$7.00 AN HOUR.
- 18 THEY HAVE TO PAY, YOU KNOW, A LOT FOR HEALTH AND WELFARE.
- 19 THAT THEY HAD A FEW HOLIDAYS. PROBABLY NOT, DIDN'T HAVE SICK
- 20 LEAVE. ALL THAT CONCERNED ME.
- 21 Q. WHEN YOU FACTOR IN THE BENEFITS ON TOP OF WAGE
- 22 DIFFERENTIAL, WE'RE TALKING ABOUT 40, 50 PERCENT REDUCTION?
- 23 A. I DON'T HAVE THE RIGHT PERCENTAGE, BUT IT WAS --
- 24 Q. MAJOR?
- 25 A. IT WAS MAJOR.
- 26 Q. THE MAYOR DIDN'T ADDRESS THAT WITH THE CITY COUNCIL,

27 DID HE?

28 A. NO.

SUE HERFURTH, CSR #9645

545

1 Q. THE MAYOR?

2 A. NOT THAT I RECALL, YOU KNOW.

3 Q. THE MAYOR, AT THE CITY COUNSEL MEETING ON OCTOBER 10,  
4 2000, DID HE ADDRESS THE ISSUE REGARDING WHETHER THE  
5 LONGSHOREMEN COULD EXTEND THEIR COLLECTIVE BARGAINING  
6 AGREEMENT TO SAN JOSE?

7 A. NOT AT ALL.

8 Q. SO THE ONLY THING HE SAID AT THE CITY COUNCIL WAS THE  
9 WORKER RETENTION ISSUE?

10 A. YES.

11 Q. SO TWO OF THE THREE ISSUES WEREN' T EVEN ADDRESSED BY  
12 THE MAYOR AND CITY COUNCIL?

13 A. THAT' S CORRECT.

14 Q. YET YOU DECIDED NOT TO ASK FOR A POSTPONEMENT OF THE  
15 VOTE?

16 A. BECAUSE I WASN' T SURE, I HAD MY OWN ASSURANCES THAT  
17 THE FIRST MAJOR STEP WAS TO GET MY MEMBERS HIRED, THEN THE  
18 OTHER TWO ITEMS WILL COME INTO PLACE.

19 Q. WHEN DID THE MAYOR GIVE YOU THOSE ASSURANCES?

20 A. DURING THE COUNCIL MEETING HE SPECIFIED, HE STATED  
21 ALL OF THE EMPLOYEES, ALL OF THEM, WILL PERFORM DUTIES FOR THE  
22 CITY OF SAN JOSE, YOU KNOW, THE DIFFERENT VENDORS WILL BE  
23 RETAINED BY THE NEW VENDORS COMING IN.

24 Q. BUT WHAT ABOUT THE OTHER TWO ISSUES?

25           A.       THEY WERE GOING TO COME INTO PLAY. ONE OF THE  
26 SITUATIONS I HAD WAS I HAD MY MEMBERS HIRED, 43 EMPLOYEES  
27 HIRED. THERE WAS, IF THERE WAS TO BE AN ELECTION, A NATIONAL  
28 LABOR RELATIONS BOARD ELECTION BETWEEN MY LOCAL AND THE

SUE HERFURTH, CSR #9645

546

1 LONGSHOREMEN' S, I WAS GOING TO WIN, I WAS GOING TO GAIN THE  
2 REPRESENTATION, BECAUSE MY MEMBERS WERE SOLIDLY BEHIND ME.  
3 THAT WOULD HAVE BEEN ISSUE TWO OF NUMBER THREE, HOW COULD I  
4 HAVE DONE THAT, AND AFTER I HAD DONE THAT I WOULD HAVE  
5 COLLECTIVE BARGAINING RIGHTS WITH CWS, AND I COULD DEMAND FOR  
6 THEM TO SIT DOWN AND NEGOTIATE WITH ME.

7           SO MY CONCERN AS I STATED IT WASN' T LEGAL AT THAT  
8 TIME WHEN THEY MAY HIRE WORKERS FROM OAKLAND, THEY MAY HIRE  
9 SOME PEOPLE. SO THE LETTER FROM SANGIACOMO, WE MAY HIRE THEM,  
10 MAY ACCOMMODATE THEM SOMEPLACE ELSE, I FELT ONCE THE MAYOR  
11 WENT ON THE RECORD AT CITY COUNCIL, ALL OF THE WORKERS, HE  
12 REFERRED TO ALL THE WORKERS. HE DIDN' T SAY MEMBERS WERE GOING  
13 TO BE HIRED. THAT TO ME WAS THE FIRST STEP THAT I NEEDED IN  
14 ORDER TO ASSURE THE WELFARE OF MY WORKERS.

15           Q.       DID SOMETHING HAPPEN BETWEEN OCTOBER 6 AND  
16 DECEMBER --

17           COURT REPORTER: PLEASE REPEAT THE QUESTION.

18 BY MR. FINKELSTEIN:

19           Q.       DID SOMETHING HAPPEN BETWEEN OCTOBER 6, 2000, WHEN  
20 YOU SENT THE LETTER TO AMY DEAN AND THE COUNCIL MEMBERS, AND  
21 THE DATE OF THE COUNCIL VOTE THAT CAUSED YOU TO RETHINK YOUR  
22 POSITION ABOUT SEEKING A POSTPONEMENT OF THE COUNCIL VOTE?

23 A. PROBABLY. MORE LIKELY THAT AMY DEAN TALKED TO ME AND  
24 TOLD ME THAT THE MAYOR WAS GOING TO ANNOUNCE THAT EVERYBODY  
25 WAS GOING TO GET HIRED. AND BELIEVE ME, YOU KNOW, IN  
26 COLLECTIVE BARGAINING, TO ME THAT WAS THE MAJOR FIRST STEP, TO  
27 GET MY GUYS HIRED, SO I FELT COMFORTABLE. IF I OBTAINED THAT,  
28 I HAD HALF THE BATTLE WON.

SUE HERFURTH, CSR #9645

547

1 Q. SO IT'S ONE-THIRD OF THE ISSUES, BUT HALF THE BATTLE?

2 A. THE OTHER TWO ISSUES WILL COME INTO PLACE THE WAY THE  
3 LAW OPERATES.

4 Q. OKAY. JUST A MINUTE.

5 MR. FINKELSTEIN: LET'S MARK AS GRAND JURY EXHIBIT  
6 68 A CARD CHECK AND NEUTRALITY AGREEMENT BETWEEN CALIFORNIA  
7 WASTE SOLUTIONS AND TEAMSTERS LOCAL 350. IT'S DATED DECEMBER  
8 11, 2000.

9 THE FOREMAN: SO MARKED.

10 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
11 JURY EXHIBIT 68.)

12 BY MR. FINKELSTEIN:

13 Q. MR. MORALES, COULD YOU LOOK AT EXHIBIT 68 AND TELL US  
14 WHAT IT IS?

15 A. THIS IS THE, YOU CAN CALL IT A MEMORANDUM OF  
16 UNDERSTANDING OR AN AUTHORITY AGREEMENT THAT FINALLY CWS  
17 SIGNED WITH LOCAL 350.

18 Q. WHEN DID THEY SIGN IT?

19 A. DECEMBER 11, 2000 IF THAT'S THE DAY AFTER THE COUNCIL  
20 MEETING. NO, DECEMBER.

- 21 Q. OH, DECEMBER 11?
- 22 A. THE COUNCIL MEETING WAS IN OCTOBER.
- 23 Q. THERE ACTUALLY WAS A SECOND COUNCIL MEETING, WAS
- 24 THERE NOT?
- 25 A. YEAH. THERE WAS A COUPLE, I DON'T KNOW THE DATES.
- 26 Q. LET ME SEE IF I CAN JOG YOUR MEMORY. YOU WERE AT THE
- 27 OCTOBER 10 MEETING, RIGHT?
- 28 A. YES, SIR.

SUE HERFURTH, CSR #9645

548

- 1 Q. AND AT THE OCTOBER 10 MEETING, THE SELECTION OF
- 2 NORCAL WAS NOT FINAL. WASN'T THERE A REFERRAL TO THE CITY
- 3 AUDITOR TO REVIEW THE PROPOSAL, THE FINANCIAL FEASIBILITY AND
- 4 OPERATIONAL FEASIBILITY, AND IT WASN'T SUPPOSED TO COME BACK
- 5 TO THE COUNCIL UNTIL DECEMBER, THE FINAL ELECTION?
- 6 A. I DON'T RECALL THE DATE, BUT YOUR REPRESENTATION
- 7 SOUNDS RIGHT.
- 8 Q. ACTUALLY, APPARENTLY THE SECOND HEARING BEFORE THE
- 9 COUNCIL WAS ON DECEMBER 12, AND LOOKING AT EXHIBIT 22, THERE
- 10 WAS A DECEMBER 12 MEETING. SO THIS, WE'VE HEARD EVIDENCE
- 11 ABOUT THAT, THE JURY HAS.
- 12 AT THIS DECEMBER 12 MEETING, THAT'S WHEN THE FINAL
- 13 SELECTION WAS MADE, SO YOUR AGREEMENT WAS ACTUALLY THE DAY
- 14 BEFORE THAT SECOND MEETING, RIGHT?
- 15 A. YES, SIR.
- 16 Q. NOW, WHAT WAS, CAN YOU SORT OF EXPLAIN OR SUMMARIZE
- 17 FOR THE JURORS WHAT THIS AGREEMENT SAYS?
- 18 A. THE AGREEMENT STATES IN HERE THAT, IT SETS THE RIGHTS

19 UNDER THE NATIONAL LABOR RELATIONS BOARD FOR A, TO ALLOW THE  
20 UNION, YOU KNOW, TO CONDUCT AN ORGANIZING CAMPAIGN WITH  
21 WORKERS. IT GIVES THE EMPLOYEES THE RIGHT TO, YOU KNOW,  
22 SELECT ANY LABOR ORGANIZATION THAT THEY SO CHOOSE.

23 ALSO, IT BOUND THE COMPANY TO HIRE EMPLOYEES FROM  
24 THE POOL OF WORKERS THAT ARE IN THE CONTRACT WITH US FOR THE  
25 JOBS THAT WILL BE IN EXISTENCE. WE ALSO CONVINCED THE COMPANY  
26 TO AGREE TO WHAT WE REFER TO AS A ONE-YEAR WINDOW THAT THEY  
27 COULDN'T HIRE EMPLOYEES FROM ANY OTHER PLACE EXCEPT FROM THE  
28 POOL OF WORKERS. AND THE REASON WHY, WE FELT WE CANNOT FORCE

SUE HERFURTH, CSR #9645

549

1 A COMPANY TO HIRE EVERYBODY, SO IF THEY DID HIRE, LET'S SAY,  
2 20 OR 25 EMPLOYEES IN THE EXISTING POOL, WE STILL HAD EIGHTEEN  
3 MORE THAT WOULD HAVE NO JOBS; HOWEVER, UNDER THIS AGREEMENT IT  
4 BOUND CWS THAT THEY HAVE TO EXHAUST THE HIRING OF THE  
5 REMAINING EMPLOYEES WHO DIDN'T GET A JOB TO BEGIN WITH DURING  
6 THAT YEAR. AND THE YEAR, YOU KNOW, WAS TO TAKE THIS PROCESS  
7 TO YEAR 2003.

8 Q. DID IT CONTAIN A CARD CHECK PROVISION?

9 A. YES.

10 Q. PLEASE EXPLAIN WHAT THAT IS.

11 A. WE AGREED THAT THE EMPLOYER, BEING CWS, COULD AT ANY  
12 TIME DEMAND THAT THE UNION PRODUCE SIGNED AUTHORIZATION CARDS  
13 STIPULATING THAT WE WERE IN FACT THE REPRESENTATIVE.

14 Q. SO, IN OTHER WORDS, BY THIS AGREEMENT YOU AVOIDED  
15 HAVING AN NLRB SUPERVISED ELECTION TO DECIDE WHICH UNION WOULD  
16 REPRESENT CWS'S EMPLOYEES?

17 A. WELL, THE AGREEMENT DID NOT INCLUDE THE LONGSHOREMEN.  
18 THIS AGREEMENT WAS BETWEEN CWS AND THE TEAMSTER'S UNION. WE  
19 HAD THE OBLIGATION TO PROVE TO THE EMPLOYER THAT WE REPRESENT  
20 THE WORKERS.

21 Q. LET ME TRY ASKING THE QUESTION AGAIN. BY THIS  
22 AGREEMENT YOU AVOIDED HAVING THE NLRB CONDUCT A SUPERVISED  
23 ELECTION TO DETERMINE WHICH UNION WOULD REPRESENT CWS MRF  
24 WORKERS, CORRECT?

25 A. THEY WERE MY MEMBERS, I REPRESENTED THEM.

26 Q. BUT THEY WEREN'T HIRED BY CWS AT THAT TIME, WERE  
27 THEY?

28 A. NO, THEY WERE NOT.

SUE HERFURTH, CSR #9645

550

1 Q. I MEAN, IS IT YOUR POSITION, IF YOU REPRESENT THE  
2 WORKERS AT SAFEWAY AND ALBERTSON'S TAKES OVER THE STORE, YOU  
3 NOW REPRESENT THE WORKERS AT ALBERTSON'S, IS THAT YOUR  
4 POSITION?

5 A. NO.

6 Q. YOU REPRESENTED WORKERS AT WASTE MANAGEMENT, RIGHT?

7 A. THAT'S CORRECT.

8 Q. AND A NEW EMPLOYER WAS COMING TO TOWN, CWS?

9 A. TO PERFORM THEIR JOBS.

10 Q. RIGHT, BUT JUST LIKE THE SUPERMARKET EXAMPLE, IT  
11 MIGHT BE THE SAME WORK, BUT IT'S A DIFFERENT EMPLOYER, IS IT  
12 NOT?

13 A. NO, YOU CANNOT COMPARE THE SAFEWAY. TO BEGIN WITH,  
14 SAFEWAYS DON'T OPERATE WITH THE FRANCHISE AGREEMENTS FROM THE

15 CITY. SAFEWAY, IN FACT, IS LIKE A PRIVATE EMPLOYER WHO HAD  
16 NOTHING, CITY HALL HAD NOTHING TO DO WITH IT. THE FRANCHISE  
17 HAD NOTHING TO DO, SAFEWAY DON'T GO TO CITY HALL IN SAN JOSE  
18 AND SAY, WE NEED YOUR BLESSING TO OWN A STORE AND WE NEED YOUR  
19 BLESSING TO HIRE THESE BECAUSE THAT IS WHAT WE WANT TO DO.

20 IT'S DIFFERENT. THE FRANCHISE IS DETERMINED BY THE  
21 GROUND RULES THAT THE CITY PUTS ON THEIR PUBLIC CONTRACTS.  
22 SAFEWAY AND ALBERTSON'S DO NOT HAVE PUBLIC CONTRACTS WITH THE  
23 CITY OF SAN JOSE. NOT THAT I KNOW OF, ANYWAY.

24 Q. DID THE CITY PUT GROUND RULES ON THIS CONTRACT THAT  
25 REQUIRED RECOGNITION OF YOUR UNION FOR CWS?

26 A. NO.

27 Q. LET ME FINISH THE QUESTION. DID THE CITY IMPOSE  
28 GROUND RULES IN THIS CONTRACT THAT REQUIRED CWS TO RECOGNIZE

SUE HERFURTH, CSR #9645

551

1 THE TEAMSTERS FOR, AS THEIR REPRESENTATIVES OF WORKERS HIRED  
2 IN SAN JOSE?

3 A. NO.

4 Q. IN THE ABSENCE OF THIS AGREEMENT, IF YOU HAD  
5 PREVAILED WITH NLRB THERE WOULD HAVE BEEN NLRB IN THE  
6 SUPERVISED ELECTION TO DECIDE WHICH UNION REPRESENTED THE  
7 CWS'S MRF WORKERS IN SAN JOSE, CORRECT?

8 A. NO.

9 Q. WHAT WOULD HAVE HAPPENED?

10 A. UH -- IF YOU READ THE CHARGE WHICH WE GAVE YOU COPIES  
11 OF, WE WANTED TO GET A DETERMINATION FROM THEM THAT THE  
12 POSITION THAT CWS WAS TAKING WITH THE CITY OF SAN JOSE WAS

13 ILLLEGAL BECAUSE THEY WERE BRINGING IN A COLLECTIVE BARGAINING  
14 AGREEMENT WITH ANOTHER UNION FROM ANOTHER INTO SAN JOSE  
15 WITHOUT CONSIDERATION FOR THE EXISTING WORKERS, WHO INDIRECTLY  
16 WORKED FOR THE CITY OF SAN JOSE AND WERE ENTITLED TO THOSE  
17 JOBS.

18 IT'S A BIG DIFFERENCE BETWEEN THIS AND A PRIVATE  
19 STORE SUCH AS SAFEWAY AND ALBERTSON'S.

20 Q. YOU THOUGHT THAT IF YOU HAD PREVAILED AT THE NLRB,  
21 THEY WOULD HAVE REQUIRED CWS TO RECOGNIZE THE TEAMSTERS?

22 A. NO. BUT THEY --

23 Q. HOW WOULD IT BE DECIDED THEN?

24 A. THEY WOULD HAVE VOIDED THAT ARRANGEMENT.

25 Q. HOW WOULD IT BE DECIDED AS TO WHICH UNION REPRESENTED  
26 THE WORKERS?

27 A. PROBABLY THROUGH A NEUTRALITY AGREEMENT SUCH AS THE  
28 ONE WE SIGNED, OR TO GO TO AN ELECTION.

SUE HERFURTH, CSR #9645

552

1 Q. THAT'S WHAT STARTED THE ROUND OF QUESTIONS. IN THE  
2 ABSENCE OF THIS AGREEMENT, THERE WOULD HAVE BEEN NLRB IN THE  
3 ELECTION TO DECIDE WHICH UNION WAS GOING TO REPRESENT THESE  
4 MRF WORKERS, CORRECT?

5 A. NO, SIR.

6 Q. WHAT AM I MISSING?

7 A. YOU'RE MISSING ONE OF THE MAIN ISSUES, THAT THE  
8 LONGSHOREMEN DIDN'T GO AND FILE AN UNFAIR LABOR PRACTICE  
9 BECAUSE THEY FELT THAT THEY WERE BEING NEGLECTED AND, WITHOUT  
10 TALKING TO THEM, THEY DIDN'T DO THAT BECAUSE THEY KNEW WHAT

11 THEY HAD DONE WAS WRONG.

12 Q. THAT'S YOUR OPINION?

13 A. YES, THAT'S MY OPINION.

14 Q. BUT AGAIN, IN THE ABSENCE OF THIS AGREEMENT WE'VE  
15 MARKED AS EXHIBIT 68 HERE, HOW WOULD THE ISSUE OF WHICH UNION  
16 REPRESENTED CWS' S MRF WORKERS HAVE BEEN DECIDED?

17 A. I COULDN'T ANSWER THAT BECAUSE WHEN, IF YOU LOOK AT  
18 THE DOCUMENTS WITH THE NLRB, THERE IS NO PETITION FROM ANY  
19 OTHER UNION, WHETHER IT IS CARPENTERS, LONGSHOREMEN, OR  
20 OPERATING ENGINEERS. AT THE END IT BECAME AN ISSUE BETWEEN  
21 CWS AND THE TEAMSTERS.

22 Q. BUT IN YOUR CHARGE TO THE NLRB, YOU DIDN'T ASK THE  
23 NLRB TO FORCE CWS TO RECOGNIZE THE TEAMSTERS, DID YOU?

24 A. THAT'S CORRECT.

25 Q. YOU ONLY ASKED THEM TO VOID ANY COLLECTIVE BARGAINING  
26 AGREEMENT WITH THE LONGSHOREMEN?

27 A. THAT'S CORRECT.

28 Q. SO THERE WOULD HAVE BEEN NO AGREEMENT BETWEEN CWS AND

SUE HERFURTH, CSR #9645

553

1 THE SAN JOSE MRF WORKERS, RIGHT?

2 A. NO. I DON'T KNOW HOW TO CONVINCING YOU THAT --  
3 EVERYTHING WE DID WAS LEGAL. AT THE END --

4 Q. I'M NOT SUGGESTING --

5 A. AT THE END OF THE DAY, THEY WANT THE OTHER UNION TO  
6 HAVE AN ELECTION. WHAT I AM TRYING TO EXPLAIN, AT THE END OF  
7 THE PROCESS THE LONGSHOREMEN HAVE DISAPPEARED FROM THE SCENE.  
8 THEY HAD GIVEN UP ANY INTEREST IN THIS. SO WE ENDED UP AS THE

9 SOLE LABOR ORGANIZATION HERE THAT WE COULD NOT FORCE CWS TO  
10 SAY WE HEREBY RECOGNIZE THE TEAMSTERS WITHOUT PUTTING THE  
11 PROPER LANGUAGE IN THE AGREEMENT WHICH INSTRUCTED --

12 Q. WHY DID YOU NEED THIS AGREEMENT?

13 A. IN ORDER TO HAVE COLLECTIVE BARGAINING RIGHTS.

14 Q. WHY IS THAT? YOU ALREADY REPRESENTED MRF WORKERS --

15 A. I HAD NOTHING IN WRITING FROM CWS DIRECTLY THAT SAID  
16 THAT THEY WOULD -- IF WE COULD PROVE WE REPRESENTED THE  
17 MAJORITY, THEY WILL RECOGNIZE ME AS THE COLLECTIVE BARGAINING  
18 AGENT FOR THESE WORKERS. WHEN THEY SIGNED THIS DOCUMENT, YOU  
19 KNOW, YOU HAVE A COPY. IT STATES THE PARAMETERS AND RULES  
20 THAT APPLY TO A NEUTRALITY AGREEMENT. THE NEUTRALITY WASN'T  
21 BORN WITH THE LOCAL. THEY ARE SIGNED EVERY DAY.

22 Q. I UNDERSTAND ALL THAT. THE QUESTION IS SIMPLY THIS:  
23 IF YOU DIDN'T HAVE THIS AGREEMENT, HOW WOULD THE DETERMINATION  
24 OF WHICH UNION REPRESENTED CWS'S NEWLY HIRED MRF WORKERS IN  
25 SAN JOSE BE MADE WITHOUT THIS AGREEMENT?

26 A. I DON'T KNOW.

27 Q. WOULDN'T THERE HAVE TO BE AN ELECTION --

28 A. BETWEEN THE EMPLOYER AND US, YES.

SUE HERFURTH, CSR #9645

554

1 Q. SO AS A RESULT OF THIS AGREEMENT -- STRIKE THAT.

2 WHAT WAS THE EFFECT OF THIS AGREEMENT, WASN'T THE  
3 EFFECT OF THIS AGREEMENT, AMONG OTHER THINGS, TO GET CWS TO  
4 RECOGNIZE THE TEAMSTERS AS THE BARGAINING REPRESENTATIVE OF  
5 THESE WORKERS THAT WOULD BE HIRED IN 2002?

6 A. YES.

7 Q. IN EARLY 2002. OKAY, NOW WE'RE JUMPING AHEAD.  
8 A. OKAY.  
9 Q. DID CWS AGREE TO RECOGNIZE THE TEAMSTERS AS THE  
10 EXCLUSIVE BARGAINING REPRESENTATIVE FOR THE CWS'S MRF WORKERS  
11 IN SAN JOSE?  
12 A. YES.  
13 Q. NOW, IN LATE DECEMBER 2002, DID DAVID DUONG ASK YOU  
14 TO USE YOUR CONTACTS IN THE CITY TO HELP HIM GET SOME MORE  
15 MONEY FROM THE CITY TO COVER THE DIFFERENCE IN WAGES AND  
16 BENEFITS BETWEEN THE TEAMSTERS AND LONGSHOREMEN?  
17 A. YES.  
18 Q. WHO WERE YOUR CONTACTS IN THE CITY?  
19 A. UH -- AT THAT TIME IT WAS THE MAYOR, MEMBERS OF THE  
20 STAFF.  
21 Q. WHICH MEMBERS?  
22 A. YOU KNOW, THE CHIEF OF STAFF --  
23 Q. BY THE WAY --  
24 A. JUDE BARRY.  
25 Q. JUDE LAW IS AN ACTOR.  
26 A. YES, BUT IT CAME EASY TO MY MIND. I WANTED TO FIND  
27 AN OPPORTUNITY TO TELL YOU I REMEMBERED HIS LAST NAME, HIS  
28 LAST NAME IS BARRY.

SUE HERFURTH, CSR #9645

555

1 Q. THANK YOU FOR CLARIFYING THAT.  
2 A. ALSO, WE TALKED TO EVERYBODY, CARL MOSHER, NINA  
3 GRAYSON.  
4 Q. WHAT ABOUT JOE GUERRA?

- 5           A.       JOE GUERRA, I THINK, BY THAT TIME I THINK THAT HE WAS  
6 ALREADY INVOLVED IN THE TEAMSTERS TO TRY TO RESOLVE THIS.  
7           Q.       BY THE WAY, THERE WAS AN ELECTION IN NOVEMBER OF  
8 2002, WASN' T THERE?  
9           A.       WHERE?  
10          Q.       IN THE CITY OF SAN JOSE IN 2002, WAS THERE AN  
11 ELECTION?  
12          A.       YES, SIR.  
13          Q.       AND DID THE MAYOR RUN FOR REELECTION?  
14          A.       YES.  
15          Q.       WAS THAT IN THE PRIMARY OR RUNOFF?  
16          A.       I COULDN' T TELL YOU. I HELD SO MANY ELECTIONS THAT I  
17 AM LOSING COUNT.  
18          Q.       IT WAS SOMETIME IN 2002?  
19          A.       I KNOW HE GOT REELECTED.  
20          Q.       WAS IT IN 2002?  
21          A.       YES.  
22          Q.       DID THE TEAMSTERS PROVIDE HIM WITH CAMPAIGN HELP?  
23          A.       YES.  
24          Q.       WHAT HELP?  
25          A.       WE, ON SATURDAYS, AND SOMETIMES DURING THE WEEK,  
26 LARRY DAUGHERTY ENLISTED THE ASSISTANCE OF SOME OF OUR WORKERS  
27 AND DRIVERS TO HELP THE MAYOR WITH PRECINCT WALKING.  
28          Q.       HOW MANY PRECINCT WORKERS DID TEAMSTERS SUPPLY IN THE

SUE HERFURTH, CSR #9645

556

- 1 MAYOR' S CAMPAIGN?  
2           A.       IT VARIED.

- 3 Q. GIVE US A BALLPARK ESTIMATE.
- 4 A. ON A GIVEN SATURDAY, SOMETIMES 10, 12.
- 5 Q. COULD --
- 6 A. WHOEVER WE COULD FIND THAT WOULD VOLUNTEER TO HELP
- 7 US.
- 8 Q. YOU DID THIS ON A NUMBER OF DIFFERENT SATURDAYS?
- 9 A. YES, SIR.
- 10 Q. WAS IT ALWAYS THE SAME 10?
- 11 A. NO.
- 12 Q. IN TOTAL, HOW MANY DIFFERENT MEMBERS WALKED PRECINCTS
- 13 FOR THE MAYOR?
- 14 A. I DON'T KNOW, WHOEVER WE COULD FIND IN OUR INDUSTRY.
- 15 WE HAVE MEMBERS WHO WORK ON SATURDAYS, SO WE WOULD HAVE TO
- 16 SWITCH --
- 17 Q. ARE WE TALKING ABOUT A HUNDRED PEOPLE?
- 18 A. I WOULD SAY MORE LIKE MAYBE 40 OR 50.
- 19 Q. OKAY. AND BY THE WAY, DO YOU KNOW THAT IN TERMS OF
- 20 MONEY CONTRIBUTIONS, THE CITY HAS A CAP IN THE MAYOR'S RACE OF
- 21 \$500 FROM A SINGLE SOURCE?
- 22 A. YES, SIR.
- 23 Q. BUT THE LABOR OF WALKING PRECINCTS HAS NO CAP OR
- 24 LIMITATION, CORRECT?
- 25 A. NOT THAT I KNOW OF, SIR.
- 26 Q. WHAT ELSE DID THE TEAMSTERS DO TO HELP THE MAYOR IN
- 27 HIS CAMPAIGN OF 2002?
- 28 A. THAT WAS IT.

SUE HERFURTH, CSR #9645

- 1 Q. JUST WALK PRECINCTS?
- 2 A. YES.
- 3 Q. DID, DOES THE TEAMSTERS HAVE SOME KIND OF NEWSLETTER
- 4 IT PUBLISHES TO MEMBERS?
- 5 A. YES.
- 6 Q. DID THE NEWSLETTER MAKE ANY ENDORSEMENTS OR
- 7 RECOMMENDATIONS OF THE MAYOR?
- 8 A. I DON'T RECALL EXACTLY, BUT IT WON'T BE UNUSUAL, YOU
- 9 KNOW, THAT WE WOULD PUT HIS NAME IN THE PAPER, SEND IT TO THE
- 10 MEMBERS WHO RESIDE IN SAN JOSE.
- 11 Q. DO YOU THINK THAT HAPPENED IN 2002?
- 12 A. I THINK SO. I'M NOT TOO SURE, BUT I LEAN MORE
- 13 TOWARDS YES.
- 14 Q. DID THE TEAMSTERS ENDORSE THE MAYOR IN THAT RACE?
- 15 A. YES.
- 16 Q. AND IN YOUR EXPERIENCE, DID THE MEMBERS TEND TO
- 17 FOLLOW THOSE KINDS OF RECOMMENDATIONS?
- 18 A. I DIDN'T UNDERSTAND.
- 19 Q. IN YOUR EXPERIENCE, WHEN THE UNION RECOMMENDS A
- 20 CANDIDATE, DOES THAT HAVE THE EFFECT OF SWAYING THE MEMBERS' S
- 21 DECISION ON WHO TO VOTE FOR?
- 22 A. I HOPE SO.
- 23 Q. WHAT DID THE TEAMSTERS DO TO ASSIST THE MAYOR IN HIS
- 24 REELECTION CAMPAIGN?
- 25 A. IN THIS PARTICULAR RACE, TO THE BEST OF MY
- 26 RECOLLECTION, IT WAS PRECINCT WALKING.
- 27 Q. WHEN DAVID DUONG ASKED YOU IN LATE DECEMBER 2002 TO
- 28 USE YOUR CONTACTS IN THE CITY TO HELP HIM GET MORE MONEY FROM

SUE HERFURTH, CSR #9645

1 THE CITY, WHAT DID YOU TELL MR. DUONG?

2 A. I TOLD MR. DUONG THAT I DIDN'T WANT HIM TO HAVE THE  
3 PERCEPTION OF THE IDEA THAT IN ORDER FOR US TO NEGOTIATE THAT  
4 CONTRACT, HE WOULD HAVE TO GET MONEY FROM THE CITY. I WAS  
5 STRICTLY, EMPHATICALLY CLEAR THAT THAT WAS HIS OBLIGATION, AND  
6 I ALSO TOLD HIM THAT MY OPINION WAS THAT HE SHOULD GO TO  
7 NORCAL ALSO AND ASK NORCAL FOR THE MONEY TO PAY FOR ANY  
8 CONTRACT WE FINALLY CONSUMMATED, BUT I DIDN'T MIND GOING TO  
9 THE CITY AND AGAIN TALKING TO THE CITY COUNCIL AND TALKING TO  
10 THE MAYOR AND STAFF OR WHOEVER ELSE WOULD LISTEN TO TRY TO  
11 HELP HIM, BECAUSE I FELT THAT HE LACKED KIND OF BUSINESS  
12 EXPERIENCE.

13 YOU KNOW, I KNEW HE WAS HAVING PROBLEMS WITH THE  
14 BUILDING THAT HE HAD SELECTED. HE HAD SELECTED A BUILDING  
15 THAT WAS TOO SMALL, FRANKLY.

16 I FELT SORRY FOR THE GUY BECAUSE I FELT THAT HE HAD,  
17 WHAT I PREDICTED TO BEGIN WITH THIS SITUATION, IT WAS COMING  
18 TRUE. YOU KNOW, THAT HE HAD GONE WITH THE CITY OF SAN JOSE,  
19 WHICH IS A BIG CITY. AND SO I WENT AND LOBBIED IF THERE WAS  
20 ANY WAY TO HELP HIM.

21 Q. DID YOU TELL MR. DUONG YOU WOULD SUPPORT HIS EFFORTS  
22 TO GET MONEY FROM THE CITY?

23 A. YES.

24 Q. AND THE REASON YOU TOLD HIM THAT IS BECAUSE YOU  
25 PERCEIVED THAT MR. DUONG WAS GOING TO BE RELUCTANT TO PAY THE  
26 SUBSTANTIALLY HIGHER WAGES AND BENEFITS WITHOUT ADDITIONAL  
27 MONEY FROM THE CITY?

28 A. YES.

1 Q. BECAUSE HIS BID WAS BASED ON THE LOWER WAGES AND  
2 BENEFITS PAID TO LONGSHOREMEN?

3 A. YES.

4 Q. WHAT DID YOU DO TO SUPPORT MR. DUONG'S EFFORTS TO GET  
5 MORE MONEY FROM THE CITY?

6 A. I COMMUNICATED WITH THE MAYOR'S OFFICE, I  
7 COMMUNICATED WITH THE CITY COUNCIL MEMBERS, AND I TOLD THEM THE  
8 CRISIS, YOU KNOW, THAT WE HAD ON HAND.

9 HE WASN'T OFFERING ANYTHING, YOU KNOW, AT THE TIME I  
10 MET WITH THE GUY HE WOULD COMPLAIN, YOU KNOW, THAT HE WASN'T  
11 GOING TO MAKE IT, THAT NORCAL HAD ABANDONED HIM, THAT NORCAL  
12 WASN'T HELPING HIM AND, YOU KNOW, IT'S A SITUATION I CANNOT  
13 DESCRIBE BECAUSE I WAS NOT THERE IN THE MEETINGS, THEIR  
14 MEETINGS.

15 I USED TO SAY, DAVID, YOU HAVE LAWYERS, YOU HAVE  
16 FINANCIAL ADVISERS. WHY IS IT THAT YOU DIDN'T USE THEM WHEN  
17 YOU WERE ENTERING INTO THE AGREEMENT WITH NORCAL? YOU SHOULD  
18 HAVE HAD SOME ASSURANCES.

19 Q. WELL, LET ME ASK YOU THIS: WHEN YOU SAY YOU DEALT  
20 WITH THE MAYOR'S OFFICE, WHO DID YOU SPEAK TO?

21 A. I SPOKE WITH THE MAYOR, CHIEF OF STAFF. I SPOKE TO  
22 MR. GUERRA.

23 Q. LET'S TAKE ONE AT A TIME. TELL US ABOUT YOUR  
24 CONVERSATIONS WITH THE MAYOR CONCERNING GETTING MORE MONEY FOR  
25 CWS.

26 A. I TOLD THE MAYOR THAT WE'RE GOING TO HAVE A PROBLEM,  
27 THAT WE WEREN'T GETTING ANYWHERE WITH DAVID, BECAUSE DAVID --  
28 THE FIRST THING HE WOULD USE EVERY TIME WE MET IS, WELL, IF

SUE HERFURTH, CSR #9645

560

1 THE CITY GIVES ME THE MONEY, I'LL GIVE IT TO YOUR WORKERS.

2 I TOLD THE MAYOR THAT'S NOT THE WAY WE OPERATE, WE  
3 DON'T GO TO THE CITIES, TRY TO GET MONEY, BUT I WOULD  
4 APPRECIATE IF THERE IS ANYTHING THE CITY CAN DO IN THE NEW  
5 FRANCHISE TO HELP HIM WITH MONEY, YOU KNOW, THAT THAT WILL GO  
6 A LONG WAYS, BECAUSE THIS MAN IS TELLING ME HE DOESN'T HAVE  
7 MONEY TO PAY THE INCREASES.

8 Q. WHAT DID THE MAYOR SAY?

9 A. THERE WAS A TIME WHEN HE TOLD ME, HE SAID, "THAT'S  
10 TOUGH. THEY SIGNED THE AGREEMENTS AND, YOU KNOW, THEY GOT TO  
11 LIVE WITH IT. IT'S NORCAL AND NORCAL'S RESPONSIBILITY WITH  
12 THE AGREEMENT THEY ENTER INTO."

13 YOU KNOW, I JUST KEPT TALKING TO DIFFERENT PEOPLE  
14 AND CITY COUNCIL PEOPLE --

15 Q. HOLD ON. LET'S START WITH THE MAYOR. YOU TOLD THE  
16 MAYOR THAT DUONG WANTS MORE MONEY IN ORDER TO PAY THE  
17 INCREASED WAGES AND BENEFITS?

18 A. THAT IF WE WERE TO CONSUMMATE -- WHAT HAPPENED WAS WE  
19 WERE LIVING UNDER THE OLD COLLECTIVE BARGAINING AGREEMENT.  
20 THE CONTRACT MY LOCAL HAD WITH WASTE MANAGEMENT IS WHAT WAS IN  
21 EFFECT WHEN DAVID TOOK OVER. HE WAS LIVING BY THE OLD  
22 CONTRACT, BUT THE DOCUMENT IN HERE STATES THAT EVENTUALLY WE  
23 WOULD NEGOTIATE A SUCCESSOR AGREEMENT.

24 SO DAVID KEPT SAYING I DON'T HAVE NO MONEY, I CANNOT  
25 MEET ANYTHING ELSE. BUT HERE, EVEN WITH WHAT I'M GIVING YOU  
26 NOW, WHAT I'M PAYING MEMBERS IS NOT SUFFICIENT. SO I TOLD THE

27 MAYOR WHEN I MET WITH HIM ON MORE THAN ONE OCCASION THAT DAVID  
28 NEEDED HELP.

SUE HERFURTH, CSR #9645

561

1 Q. OKAY, SO LET ME SEE IF I UNDERSTAND THE SITUATION  
2 CORRECTLY. I APOLOGIZE.

3 A. THAT'S FINE.

4 Q. ON JULY 1, 2002, CWS TOOK OVER RECYCLING SERVICES FOR  
5 THE CITY, RIGHT?

6 A. YES, SIR.

7 Q. THAT'S IN THEIR DISTRICT?

8 A. YES, SIR.

9 Q. WAS IT ANC?

10 A. YES, SIR.

11 Q. THEY HAD MRF WORKERS WORKING IN THE FACILITY, RIGHT?

12 A. YES.

13 Q. WHO HAD FORMERLY WORKED FOR WASTE MANAGEMENT?

14 A. YES.

15 Q. WERE THEY BEING PAID AT THAT TIME, JULY OF 2002, THE  
16 WASTE MANAGEMENT WAGES AND BENEFITS OR SOMETHING DIFFERENT?

17 A. NO, THE WASTE MANAGEMENT WAGES AND BENEFITS.

18 Q. WHEN THE CWS STARTED OPERATIONS IN JULY 2002, THEY  
19 ALREADY WERE PAYING MORE THAN THE LONGSHOREMEN, RIGHT?

20 A. YES.

21 Q. SO WHAT YOU'RE TALKING ABOUT NOW IS YET A FURTHER  
22 INCREASE IN WAGES AND BENEFITS, CORRECT?

23 A. YES.

24 Q. BEYOND WHAT THE EXISTING WAGE WASTE MANAGEMENT

25 WORKERS WERE GETTING?

26 A. BECAUSE THE CONTRACT IN THE MEANTIME HAD EXPIRED.

27 Q. I SEE.

28 A. IF I WOULD HAVE BEEN WITH WASTE MANAGEMENT I WOULD

SUE HERFURTH, CSR #9645

562

1 HAVE BEEN NEGOTIATING A NEW CONTRACT WITH WASTE MANAGEMENT,  
2 BUT SINCE HE CAME INTO THE PICTURE HE INHERITED THE  
3 OBLIGATION.

4 Q. WE'RE NOT TALKING ABOUT THE INITIAL GAP BETWEEN  
5 LONGSHOREMEN AND WASTE MANAGEMENT, RIGHT?

6 A. YEAH, JUST A CONTRACT.

7 Q. WE'RE NOW TALKING ABOUT A NEW CONTRACT FOR IMPROVED  
8 WAGES AND BENEFITS?

9 A. YES.

10 Q. IT WAS THAT THAT THE MAYOR WAS RESPONDING TO WHEN HE  
11 SAID THERE WAS REALLY NOTHING HE COULD DO AT THAT POINT?

12 A. AT THE BEGINNING, THAT WAS HIS INITIAL POSITION, WAS  
13 LOOK, THEY NEGOTIATED WITH THE COMPANIES, AND YOU KNOW --

14 Q. WHEN YOU WENT TO THE MAYOR IN 2002 TO SEE IF HE WOULD  
15 HELP WITH GETTING MORE MONEY TO CWS, THAT WAS NOT TO BRING  
16 ABOUT PARITY WITH THE OLD WASTE MANAGEMENT WAGES AND BENEFITS,  
17 THAT WAS TO BRING IN MORE MONEY TO INCREASE THE WAGES AND  
18 BENEFITS, RIGHT?

19 A. THAT'S CORRECT.

20 Q. OKAY, SO DID YOU CALL THE MAYOR'S OFFICE AROUND THE  
21 END OF DECEMBER OF 2002?

22 A. PROBABLY.

23 Q. AND WHO DID YOU TALK TO?  
24 A. I DON' T RECALL.  
25 Q. WHAT DID YOU SAY?  
26 A. THE SAME, WHAT I JUST DESCRIBED TO YOU.  
27 Q. AT THAT TIME, WEREN' T YOU ASKING FOR ASSISTANCE IN  
28 ORDER TO AVOID A STRIKE?

SUE HERFURTH, CSR #9645

563

1 A. YES.  
2 Q. AND DID MAYOR GONZALES APPOINT A MEDIATOR?  
3 A. YES.  
4 Q. WHO WAS THE MEDIATOR?  
5 A. GUERRA.  
6 Q. JOE GUERRA?  
7 A. YES, SIR.  
8 Q. BUDGET AND POLICY DIRECTOR?  
9 A. YES, SIR.  
10 Q. THIS WAS TO MEDIATE A NEW AGREEMENT BETWEEN THE  
11 TEAMSTERS AND CWS FOR WAGE, NEW WAGES AND BENEFITS BEYOND WHAT  
12 THE OLD WASTE MANAGEMENT CONTRACT CALLED FOR?  
13 A. THAT WAS MY POSITION.  
14 Q. WHAT WAS MR. DUONG' S POSITION?  
15 A. IF IT WAS UP TO HIM, HE WOULD LOWER IT.  
16 Q. DID YOU AND CWS MEET AT CITY HALL FIVE OR SIX TIMES,  
17 BEGINNING IN LATE DECEMBER 2002 OR JANUARY 2003?  
18 A. YES.  
19 Q. YOU MET WITH JOE GUERRA?  
20 A. YES. AND OTHERS.

21 Q. AT THE SECOND MEETING, DID MR. GUERRA TELL YOU HE HAD  
22 SPOKEN WITH THE MAYOR AND THAT THERE MAY BE SOME MORE MONEY  
23 AVAILABLE?

24 A. YES.

25 Q. AND DID GUERRA ALSO TELL YOU -- DID GUERRA ALSO TELL  
26 CWS THAT THERE MAY BE MORE MONEY AVAILABLE FROM THE CITY?

27 A. YES.

28 Q. AT A LATER MEETING IN JANUARY, DID GUERRA CONFIRM

SUE HERFURTH, CSR #9645

564

1 THAT THE MAYOR'S OFFICE WOULD RECOMMEND A RATE INCREASE THAT  
2 WOULD AMOUNT TO ABOUT 1.9 MILLION MORE FOR CWS?

3 A. YES.

4 Q. THIS WAS ONE OF THOSE MEETINGS AT CITY HALL?

5 A. YES, SIR.

6 Q. WHO WAS PRESENT AT THIS MEETING?

7 A. IT WASN'T CITY HALL, IT WAS IN JOE GUERRA'S OFFICE.

8 Q. ISN'T HIS OFFICE AT CITY HALL?

9 A. YEAH, I THINK SO, BUT IT WASN'T THE MAIN MAYOR'S  
10 OFFICE.

11 Q. BUT IT WAS SOMEWHERE IN CITY HALL?

12 A. YES.

13 Q. THE OLD CITY HALL?

14 A. YES. AND SOME OF THE MEETINGS MICHAEL SANGIACOMO WAS  
15 PRESENT, THE CEO FOR NORCAL. ARCHIE HUMPHREY --

16 Q. I KNOW YOU WANT TO HELP US, MR. MORALES, BUT I'M NOT  
17 INTERESTED IN A GENERAL RECOUNTING OF WHO ATTENDED SOME OF THE  
18 MEETINGS. I WANT TO FOCUS ON A PARTICULAR MEETING.

19 THE MEETING IN JANUARY WHEN GUERRA SAID THAT HE HAD  
20 SPOKEN WITH THE MAYOR, MAYOR GONZALES, AND THAT THERE MAY BE  
21 SOME MORE MONEY AVAIL ABLE, WHO WAS PRESENT TO OVERHEAR THAT  
22 STATEMENT?

23 A. I TRIED TO TELL YOU --

24 Q. I THOUGHT YOU WERE TELLING ME JUST GENERALLY. WHO  
25 ELSE DO YOU THINK MAY HAVE OVERHEARD THAT STATEMENT?

26 A. MICHAEL SANGI ACOMO, AND I THINK IT WAS DAVID, MICHAEL  
27 SANGI ACOMO, AND MYSELF, MOST OF THE MEETINGS THAT TOOK PLACE  
28 IN HIS OFFICE.

SUE HERFURTH, CSR #9645

565

1 Q. AND WHAT ABOUT THE LATER MEETING IN JANUARY WHEN  
2 GUERRA CONFIRMED THAT THE MAYOR'S OFFICE WOULD RECOMMEND A  
3 RATE INCREASE THAT WOULD AMOUNT TO ABOUT 1.9 MILLION MORE FOR  
4 CWS? WHO WITNESSED THAT?

5 A. I DON'T RECALL, BUT I KNOW THAT I WAS THERE, AND SO  
6 WAS MR. DUONG. FOR SURE THE TWO OF US WERE THERE. ALSO LARRY  
7 DAUGHERTY, THE PRESIDENT OF MY LOCAL, MAY HAVE BEEN PRESENT,  
8 YOU KNOW, HE ALWAYS ATTENDS MEETINGS WITH ME.

9 Q. ON FEBRUARY 11, 2003, DID YOU MEET WITH DAVID DUONG  
10 TO SIGN A COLLECTIVE BARGAINING AGREEMENT?

11 A. YES, SIR.

12 Q. DID DUONG TELL YOU AT THAT MEETING THAT HE COULDN'T  
13 SIGN UNTIL HE HAD SOMETHING IN WRITING ABOUT EXTRA MONEY FROM  
14 THE CITY?

15 A. YES.

16 Q. DID YOU THEN ASK DAUGHERTY TO CALL GUERRA TO SET UP

17 ANOTHER MEETING?  
18 A. YES.  
19 Q. AND THEREAFTER, DID GUERRA SEND AN E-MAIL CONFIRMING  
20 WHAT THE CITY WOULD DO?  
21 A. I DON'T DO E-MAIL, SO I DON'T KNOW IF WE GOT AN  
22 E-MAIL. MAYBE LARRY DAUGHERTY, I DON'T RECALL.  
23 Q. ALL RIGHT. HOLD ON A MINUTE.  
24 LET'S MARK AS EXHIBIT 69 --  
25 THE FOREMAN: SO MARKED.  
26 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
27 JURY EXHIBIT 69.)  
28 BY MR. FINKELSTEIN:

SUE HERFURTH, CSR #9645

566

1 Q. COULD YOU TELL US WHAT THAT IS?  
2 A. THAT'S AN AFFIDAVIT THAT I PRESENTED TO THE NLRB.  
3 Q. THAT'S YOUR SIGNATURE ON THE SIGNATURE PAGE?  
4 A. YES, SIR.  
5 Q. THAT'S YOUR SIGNATURE, CORRECT?  
6 A. YES, SIR.  
7 Q. THIS WAS SWORN TO IN FRONT OF AN NLRB ATTORNEY?  
8 A. YES.  
9 Q. AND LOOKING AT THIS AFFIDAVIT, LET ME DIRECT YOUR  
10 ATTENTION TO PAGE FIVE, LINE ONE. DO YOU MAKE THE STATEMENT  
11 THERE, "GUERRA SAID HE WOULD SEND AN E-MAIL CONFIRMING WHAT  
12 THE MAYOR'S OFFICE WOULD DO"?  
13 A. YES, SIR.  
14 Q. AND THEN YOU REFERENCE AN EXHIBIT A?

- 15 A. YES.
- 16 Q. LET'S LOOK AT EXHIBIT A. IT IS THIS E-MAIL, CORRECT,  
17 THE ONE THAT SAYS MR. GUERRA WAS DIAGNOSED WITH PNEUMONIA. DO  
18 YOU HAVE THAT?
- 19 A. YES.
- 20 Q. SHOWING YOU WHAT I BELIEVE IS ANOTHER COPY OF THAT  
21 E-MAIL, CAN YOU TAKE A LOOK ON THE SCREEN FOR A MOMENT AT  
22 EXHIBIT 31, MR. MORALES?
- 23 A. OKAY.
- 24 Q. DO YOU SEE EXHIBIT 31?
- 25 A. YES, SIR.
- 26 Q. DO YOU SEE THAT IT'S AN E-MAIL AS WELL?
- 27 A. YEAH, I SEE IT.
- 28 Q. IS THAT THE SAME E-MAIL THAT YOU MADE REFERENCE TO IN

SUE HERFURTH, CSR #9645

567

- 1 EXHIBIT A? WHY DON'T YOU TAKE A MOMENT AND COMPARE THE TWO.
- 2 A. YEAH, IT LOOKS THE SAME.
- 3 Q. SAME DATE, SAME WORDS, CORRECT?
- 4 A. YES, SIR.
- 5 Q. IT'S A LITTLE SMALLER PRINT, I THINK THAT WE HAVE A  
6 FAX COPY, BUT THE CONTENT APPEARS TO BE THE SAME?
- 7 A. YES.
- 8 Q. OKAY. WHEN DID YOU OBTAIN A COPY OF THIS E-MAIL FROM  
9 MR. GUERRA?
- 10 A. YOU KNOW, I DON'T RECALL BECAUSE, AS I STATED THIS  
11 MORNING, I DON'T USE E-MAIL.
- 12 Q. WHAT ABOUT MR. DAUGHERTY, DOES HE USE E-MAIL?

- 13 A. HE DOES.
- 14 Q. BY THE WAY, HAS MR. DAUGHERTY SEARCHED HIS COMPUTER  
15 FOR E-MAILS?
- 16 A. YES, I TOLD YOU HIM AND JIM FURGAS SEARCHED THEIR  
17 COMPUTERS TO SEE IF THERE WAS ANYTHING IN RELATION TO YOUR  
18 SUBPOENA, AND THEY DIDN'T FIND ANYTHING.
- 19 Q. SO IN THIS E-MAIL, YOU HAVE A COPY OF IT IN FRONT OF  
20 YOU, EXHIBIT A?
- 21 A. YES, SIR.
- 22 Q. DOES MR. GUERRA SAY IN THIS E-MAIL THAT HIS OFFICE,  
23 WORKING WITH THE CITY MANAGER, INTENDS TO BRING FORWARD TO THE  
24 CITY COUNCIL A RATE INCREASE. THIS WOULD INCLUDE  
25 APPROXIMATELY 95 CENTS SUBJECT TO LEGAL REVIEW AND COUNCIL  
26 APPROVAL. THESE FUNDS WOULD BE AVAILABLE TO OFFSET  
27 UNANTICIPATED LABOR COSTS UNDER NORCAL'S CONTRACT WITH THE  
28 CITY.

SUE HERFURTH, CSR #9645

568

- 1 A. YES.
- 2 Q. THIS RATE INCREASE WILL TAKE APPROXIMATELY FOUR  
3 MONTHS TO PROCESS, CORRECT?
- 4 A. YES, SIR.
- 5 Q. NOW, I'M WONDERING IF YOU CAN CLARIFY SOMETHING FOR  
6 US. YOUR IMPRESSION IS THAT THIS RATE INCREASE HAS TO DO WITH  
7 A SUCCESSOR AGREEMENT BETWEEN THE TEAMSTERS AND CWS?
- 8 A. NOT A SUCCESSOR AGREEMENT, BUT A NEW AGREEMENT.
- 9 Q. AND ABOUT THE INITIAL INCREASE REPRESENTING THE  
10 DIFFERENCE IN WAGES AND BENEFITS BETWEEN THE LONGSHOREMEN AND

11 TEAMSTERS?

12 A. NO.

13 Q. SO WAS IT YOUR BELIEF THAT CWS, WHO HAD ORIGINALLY  
14 BID THE CONTRACT WITH LONGSHOREMEN'S WAGES AND BENEFITS, WAS  
15 SIMPLY ABSORBING THE EXTRA WAGES AND BENEFITS COST OF PAYING  
16 TEAMSTERS WAGES AND BENEFITS?

17 A. TO BE HONEST WITH YOU --

18 Q. I HOPE YOU'RE BEING HONEST.

19 A. I'M SORRY, I SAID THE WRONG THING. WHAT I'M SAYING  
20 TO YOU -- WHAT I MEANT TO SAY WAS THAT I NEVER SAW THE BIDS  
21 THAT DAVID DUONG SUBMITTED TO DO CITY. I NEVER HAD THE  
22 OPPORTUNITY TO SEE THE BIDS TALKING ABOUT MONEY, HOW HE PAYS  
23 HIS BILLS, SO I WOULD VENTURE TO SAY HE PROBABLY DID IT WITH  
24 LONGSHOREMEN WAGES AND BENEFITS, BUT I CANNOT ASSURE YOU OF  
25 THAT.

26 Q. YOUR BELIEF WAS THAT HE WAS ABSORBING THIS \$11  
27 MILLION DIFFERENTIAL?

28 A. EITHER THAT OR NORCAL WAS GIVING HIM THE MONEY.

SUE HERFURTH, CSR #9645

569

1 Q. WHY DO YOU THINK NORCAL WOULD BE -- YOU THOUGHT  
2 NORCAL WAS GIVING MONEY OUT OF GENEROSITY?

3 A. NO, BUT IF YOU LOOK AT THE E-MAIL THAT MR. GUERRA  
4 SUPPOSEDLY SENT, OUR NAME IS NOT THERE ANYWAY.

5 Q. WHOSE NAME IS NOT THERE?

6 A. TEAMSTERS. ABOUT THIS E-MAIL, THAT IT WAS SENT TO  
7 TEAMSTERS.

8 Q. I KNOW, BUT YOU INCLUDED IT AS PART OF YOUR AFFIDAVIT

9 AS AN EXHIBIT.

10 A. WE COULD HAVE GOT THAT FROM A FAX. BUT IF YOU READ  
11 ON PARAGRAPH TWO OF THE E-MAIL, IT SAYS IN THERE THIS 95  
12 CENT -- SUBJECT TO THE 95 CENT INCREASE, THIS WILL BE ABLE TO  
13 OFFSET ANTICIPATED LABOR COSTS UNDER NORCAL'S CONTRACT WITH  
14 THE CITY.

15 Q. THAT'S BECAUSE NORCAL WAS THE ONLY ONE WHO HAD A  
16 CONTRACT WITH THE CITY, CWS DIDN'T HAVE A CONTRACT WITH THE  
17 CITY?

18 A. THAT'S WHAT I TRIED TO SAY THIS MORNING.

19 Q. CWS'S CONTRACT WAS WITH NORCAL?

20 A. RIGHT.

21 Q. WHAT UNANTICIPATED LABOR COSTS ARE THEY TALKING  
22 ABOUT?

23 A. MY UNDERSTANDING OF THIS --

24 Q. I'M ASKING ABOUT YOUR UNDERSTANDING.

25 A. THAT WAS SUPPOSED TO GO TO CWS.

26 Q. WHAT ARE THEY REFERRING TO WHEN THEY SAY  
27 UNANTICIPATED LABOR COSTS?

28 A. I GUESS THE INCREASES IN WAGES AND BENEFITS THAT THEY

SUE HERFURTH, CSR #9645

570

1 DIDN'T BELIEVE THAT THEY WOULD HAVE TO PAY UNDER THE TEAMSTERS  
2 CONTRACT.

3 Q. SO THEY ARE REFERRING TO THE DIFFERENCE, THE INITIAL  
4 DIFFERENCE BETWEEN TEAMSTERS WAGES AND BENEFITS AND THE  
5 LONGSHOREMEN WAGES AND BENEFITS?

6 A. NO. MY UNDERSTANDING WAS THESE MONIES, WHATEVER THE

7 MONEY MAY BE. I HEAR DIFFERENT FIGURES EVERY DAY IN THE  
8 NEWSPAPERS AND EVERYWHERE ELSE.

9 MY UNDERSTANDING IS THE MONEY WAS SUPPOSEDLY GOING  
10 TO COME OUT OF ADDITIONAL INCREASES TO OFFSET THE COLLECTIVE  
11 BARGAINING AGREEMENT, THAT I HAVE NEGOTIATED WITH DAVID DUONG  
12 FOR FUTURE INCREASES AND FUTURE BENEFITS INCREASES, EVEN  
13 THOUGH THE AGREEMENT THAT WE FINALLY REACHED DIDN'T HAVE THE  
14 SIGNATURE BECAUSE HE DIDN'T WANT TO SIGN IT.

15 Q. WE WILL GET TO THAT. SO WE HAVE BASICALLY SEVERAL  
16 INCREASES OF WAGES AND BENEFITS WE HAVE BEEN TALKING ABOUT, SO  
17 I WANT TO TRY TO CLARIFY THIS.

18 FIRST, WE HAVE THE ORIGINAL INCREASE OF WAGES AND  
19 BENEFITS REPRESENTING THE DIFFERENCE BETWEEN THE LONGSHOREMEN  
20 MRF WORKERS AND WASTE MANAGEMENT MRF WORKERS, RIGHT?

21 A. YES, SIR.

22 Q. WHERE DID YOU THINK -- THAT'S THE \$11 MILLION  
23 DIFFERENTIAL WE'RE TALKING ABOUT, RIGHT?

24 A. I REALLY DON'T KNOW, IF THAT'S THE FIGURE THAT  
25 REPRESENTED THE DIFFERENCE BETWEEN THE 7 AND 1080. MY  
26 LOBBYING AND MY EFFORTS THAT I DID IN 2003 WAS TO TRY TO  
27 GET --

28 Q. ADDITIONAL WAGES AND BENEFITS?

SUE HERFURTH, CSR #9645

571

1 A. YES.

2 Q. FOR THE FUTURE?

3 A. FOR THE FUTURE.

4 Q. YOUR BELIEF WAS THAT CWS HAD BID THE ORIGINAL

5 AGREEMENT WITH THE CITY ASSUMING THEY WERE GOING TO BE ABLE TO  
6 GET AWAY WITH PAYING LONGSHOREMEN WAGES AND BENEFITS, RIGHT?

7 A. WELL, I TOLD YOU A FEW MINUTES AGO THAT THAT'S WHAT I  
8 ASSUMED, BUT I NEVER SAW THE CONTRACT.

9 Q. THAT'S YOUR ASSUMPTION?

10 A. YES.

11 Q. YOU THOUGHT THAT THE EXTRA MONEY NEEDED TO PAY THOSE  
12 EXTRA WAGES AND BENEFITS CAME FROM NORCAL, RIGHT?

13 A. YES.

14 Q. WHERE DID YOU THINK NORCAL WAS GETTING THAT EXTRA  
15 MONEY FROM?

16 A. FROM THEIR CONTRACT, YOU KNOW, THEY GOT A CONTRACT  
17 FROM THE CITY AND THEY WERE RESPONSIBLE FOR THIS. AND I WILL  
18 TELL YOU THERE WAS OTHER EXAMPLES THAT LED ME TO BELIEVE THAT.  
19 FOR INSTANCE, THERE WAS A TIME WHEN DAVID DUONG NEEDED  
20 TRANSPORTATION SERVICE FOR HIS MATERIALS. HE WAS USING  
21 NORCAL'S TRUCKS FROM SAN FRANCISCO, AND MY UNDERSTANDING IS  
22 THAT NORCAL WAS PROVIDING THAT SERVICE FOR HIM. AND BEING  
23 THAT THOSE DRIVERS IN SAN FRANCISCO ARE MY MEMBERS, I KNEW  
24 THAT IT WAS A COSTLY SITUATION, SO I FIGURED, WELL, THEY ARE  
25 HELPING HIM WITH THIS, MAYBE THEY ARE HELPING WITH THE  
26 DIFFERENCE IN WAGES.

27 Q. MR. MORALES, DO YOU FOLLOW THE NEWS IN SAN JOSE WITH  
28 REGARD TO CITY HALL?

SUE HERFURTH, CSR #9645

572

1 A. SOMEWHAT.

2 Q. HAVE YOU HEARD THAT THERE WAS SOME CONTROVERSY

3 SURROUNDING A 2004 AMENDMENT TO THE NORCAL AGREEMENT WITH THE  
4 CITY HALL?

5 A. YES, SIR.

6 Q. AND IT INVOLVED SOME ADDITIONAL \$11 MILLION IN  
7 PAYMENTS TO NORCAL?

8 A. YES, SIR.

9 Q. AND HAVE YOU READ THAT THAT \$11 MILLION HAD TO DO  
10 WITH PAYING NORCAL SO THAT NORCAL WOULD NOT HAVE TO ABSORB THE  
11 EXTRA COSTS OF THE DIFFERENCE IN WAGES AND BENEFITS BETWEEN  
12 THE LONGSHOREMEN AND THE TEAMSTERS THAT CWS WAS PAYING?

13 A. YES, IN 2004.

14 Q. WHEN YOU READ THAT, WAS THAT A BIG SHOCK AND SURPRISE  
15 TO YOU?

16 A. SOMEWHAT, YEAH. ALL I CAN TELL YOU IS THIS. ALONG  
17 WHEN WE WERE LOBBYING THE CITY, MR. GUERRA, I WOULD LOBBY FOR  
18 ONE MILLION, 900 THOUSAND. THAT WAS THE FEE I KEPT IN MY MIND  
19 WE NEEDED FOR THE NEW CONTRACT, SO WHEN THE FIGURE OF 11 OR SO  
20 CAME ABOUT, I --

21 Q. YOU WERE SURPRISED?

22 A. I WAS KIND OF SURPRISED, BECAUSE, YOU KNOW, MY  
23 UNDERSTANDING WAS WE WERE LOBBYING, I MEAN, WE WERE HOPING  
24 THAT WE'RE GOING TO COME OUT OF THIS SITUATION WITH 1.9.

25 Q. SO YOU THOUGHT THAT THE CITY COULD JUST PAY  
26 ADDITIONAL MONEY TO NORCAL WITHOUT AMENDING THIS CONTRACT?

27 A. NO.

28 Q. WELL, HAD YOU HEARD OF ANY AMENDMENTS TO THE CONTRACT

1 BEFORE 2004?

2 A. NO. YOU KNOW, I THOUGHT THAT THE, UNTIL WE GOT  
3 INVOLVED IN 2002, YOU KNOW, THAT WE WERE LOOKING FOR MORE  
4 MONIES, I SAW THAT EVERYTHING WAS FINISHED.

5 Q. WHEN YOU SAY FINISHED, YOU KNOW, WE STARTED OUT IN  
6 OCTOBER OF 2000 WITH CWS PROPOSING TO EXTEND ITS LONGSHOREMEN  
7 COLLECTIVE BARGAINING AGREEMENT DOWN TO SAN JOSE AND  
8 PRESUMABLY PAYING THOSE LOWER WAGES AND BENEFITS, RIGHT?

9 A. YES.

10 Q. THROUGH YOUR EFFORTS, YOU'RE ABLE TO GET CWS TO AGREE  
11 TO PAY THE HIGHER TEAMSTER WAGES AND BENEFITS THAT THEY HAD  
12 BEEN GETTING AT WASTE MANAGEMENT.

13 A. YES.

14 Q. WHERE DID YOU THINK THAT EXTRA MONEY WAS COMING FROM?

15 A. EITHER FROM NORCAL, TO BE HONEST WITH YOU, I -- I'M  
16 SORRY TO USE THAT WORD. TO BE REALISTIC WITH YOU, WHEN IT  
17 COMES FROM THE POINT OF LABOR IN MY LOCAL, I COULD CARE LESS  
18 WHERE THE MONEY WAS COMING FROM. ALL I DID WAS NEGOTIATE MY  
19 CONTRACTS IN GOOD FAITH, AND SHAME ON THEM IF THEY DIDN'T GET  
20 ENOUGH REVENUE TO PAY THEIR OBLIGATIONS. THAT'S NOT MY  
21 DEPARTMENT.

22 Q. OKAY. SO DID THE TEAMSTERS STRIKE FOR ONE DAY ON  
23 FEBRUARY 19, 2003?

24 A. YES, SIR.

25 Q. WHAT WAS THE REASON FOR THE STRIKE?

26 A. I WAS GETTING EXHAUSTED AND IMPATIENT WITH  
27 NEGOTIATING WITH DAVID DUONG. WE HAD AN AGREEMENT, BUT IT  
28 WASN'T SIGNED. HE KEPT SENDING ME LETTERS TELLING ME, WELL

1 BOB, IF I'M TO HONOR THIS NEW CONTRACT, TO PAY THE NEW WAGES  
2 AND BENEFITS, I'VE GOT TO GET THE MONEY FROM THE CITY. AND I  
3 KEPT REPEATING TO HIM, I SAID, YOU KNOW WHAT, DAVID, THAT'S  
4 NOT MY DUTY, MAN, THAT'S NOT MY OBLIGATION. I WILL REALLY  
5 HELP YOU WITH YOUR EFFORTS TO GET MONEY IF THERE WAS MONEY  
6 THERE, BUT THE OBLIGATION FOR THE COLLECTIVE BARGAINING  
7 BETWEEN THE UNION AND YOU IS WITH YOU, AND THE OTHER PARTY YOU  
8 SHOULD BE ASKING FOR MONEY FROM IS NORCAL. THEY ARE THE ONES  
9 THAT BROUGHT YOU TO THIS DANCE, THEREFORE THEY SHOULD BE  
10 RESPONSIBLE.

11 SO EVEN THOUGH WE HAD TALKED TO GUERRA AND HE SAID  
12 THERE WAS SOME HOPE OF SOME MONIES COMING IN TO HELP DAVID  
13 DUONG OR NORCAL, IT WAS TAKING TOO LONG, AND MY MEMBERS WERE  
14 ASKING CONTINUALLY -- REMEMBER, THEY JUST CAME BACK FROM A  
15 LONG-TERM CONTRACT WITH WASTE MANAGEMENT AND THEY WERE ASKING,  
16 WHEN ARE WE GOING TO GET ANY INCREASES?

17 FINALLY, I STRUCK FOR ONE DAY TO SHOW DAVID AND THE  
18 CITY THAT WE MEAN BUSINESS.

19 Q. THAT WAS A ONE-DAY STRIKE?

20 A. YES, SIR.

21 Q. WHO WENT OUT ON STRIKE, THE 43 MRF WORKERS?

22 A. YES, SIR.

23 Q. WHAT ABOUT THE TEAMSTER DRIVERS?

24 A. THEY DID NOT CROSS THE LINE. THEY CONTINUED TO WORK,  
25 PICKING UP MATERIALS. BUT WHEN IT CAME TO MRF, THEY STOPPED.  
26 NORCAL SENT IN THEIR SUPERVISORS AND MANAGERS TO MOVE TRUCKS  
27 IN AND OUT OF THE PREMISES.

28 Q. WHAT WAS THE POINT OF MOVING IT INTO THE PREMISES IF

1 THERE WAS NOBODY TO DO TO THE SORTING, JUST STORAGE?

2 A. STORAGE, AND THEY PROBABLY HAVE SUPERVISORS DOING  
3 WORK INSIDE.

4 Q. I GUESS IF THEY HADN'T, NORCAL COULD HAVE DIVERTED  
5 THE LOADS TO A DIFFERENT FACILITY?

6 A. BUT THAT WOULD HAVE VIOLATED THE AGREEMENT WITH THE  
7 CITY.

8 Q. WHICH AGREEMENT WITH THE CITY?

9 A. THERE IS AN AGREEMENT THAT CWS HAD THE OBLIGATION TO  
10 SORT THE MATERIALS WITHIN THE CITY PREMISES.

11 Q. YOU THOUGHT THE CITY WOULD RATHER HAVE THE  
12 RECYCLABLES PILE UP?

13 A. I DON'T KNOW WHAT THEY THOUGHT, SIR.

14 Q. EVENTUALLY, ON JULY 10, 2003, THE TEAMSTERS SIGNED A  
15 NEW COLLECTIVE BARGAINING AGREEMENT WITH CWS?

16 A. YES, SIR, RETROACTIVE TO JULY 1, 2002.

17 MR. FINKELSTEIN: LET'S MARK EXHIBIT 70.

18 THE FOREMAN: SO MARKED.

19 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND  
20 JURY EXHIBIT 70.)

21 BY MR. FINKELSTEIN:

22 Q. PLEASE LOOK AT EXHIBIT 70 AND TELL US WHAT IT IS.

23 A. THIS IS THE FINAL DOCUMENT THAT WAS SIGNED BETWEEN  
24 CWS AND LOCAL 350 FOR A NEW COLLECTIVE BARGAINING AGREEMENT TO  
25 BE EFFECTIVE IN JULY 1, 2002.

26 Q. THIS WAS RETROACTIVE TO JULY 1, 2002?

27 A. YES, SIR.

28 Q. DID YOU BECOME AWARE IN 2004 THAT THERE WAS SOME

SUE HERFURTH, CSR #9645

576

1 EFFORT TO AMEND THE NORCAL AGREEMENT TO PROVIDE FOR THE CITY  
2 TO PAY ADDITIONAL PAYMENTS TO NORCAL OVER AND ABOVE WHAT THE  
3 ORIGINAL AGREEMENT CALLED FOR?

4 A. YES.

5 Q. DID YOU PROVIDE HELP TO NORCAL OR CWS ON THAT ISSUE?

6 A. NO, SIR. MY JOB HAD BEEN COMPLETED.

7 Q. DID YOU EVER TELL ANYONE AT CWS THAT YOU WERE HELPING  
8 CWS GET A SUBSIDY FROM THE CITY?

9 A. I'M GOING TO HAVE TO MAKE A CORRECTION. YES, I DID  
10 HELP TO MAKE SURE THAT THAT AMENDMENT WAS APPROVED BY THE CITY  
11 COUNCIL; I DID LOBBY FOR THAT.

12 Q. WHY DID YOU DO THAT?

13 A. BECAUSE OF THE SAME THING, IF I HAD BEEN SURE THAT  
14 THAT WAS APPROVED, I WAS GOING TO HAVE PROBLEMS WITH CWS  
15 AGAIN, THEY WOULD RENEGE ON THE HEALTH AND WELFARE PAYMENTS,  
16 PENSION PAYMENTS, SO ON. IT WAS FOR THE BEST INTERESTS OF MY  
17 WORKERS TO MAKE SURE IT GOT FINALIZED.

18 Q. WHAT DID YOUR HELP CONSIST OF?

19 A. BY CONTACTING SOME MEMBERS, AGAIN, OF THE CITY  
20 COUNCIL AND ASKING FOR THE LABOR COUNCIL'S HELP, YOU KNOW, IN  
21 LOBBYING, THAT THEY ENSURE THAT IT WAS FINALIZED AND APPROVED.

22 Q. AND DID YOU ALSO ENLIST THE MAYOR'S HELP?

23 A. UH --

24 Q. DID YOU ALSO SEEK THE MAYOR'S HELP?

25 A. NO.

26 Q. WHY?

27 A. BECAUSE IF HE WAS RECOMMENDING IT, MY WORK WAS WITH  
28 THE CITY COUNCIL.

SUE HERFURTH, CSR #9645

577

1 Q. WHO DID YOU SPEAK WITH ON THE COUNCIL?

2 A. I KNOW I SPOKE WITH CINDY CHAVEZ.

3 Q. WHAT DID YOU TELL HER?

4 A. THAT I WAS HOPING THAT SHE WOULD VOTE FOR THE  
5 AMENDMENT, YOU KNOW, FOR THE NEW MONIES.

6 Q. WHAT REASON DID YOU GIVE HER FOR WHY SHE SHOULD VOTE  
7 IN FAVOR OF THE AMENDMENT?

8 A. MY WORKERS, THAT WE WILL BE FACING ANOTHER SITUATION  
9 WITH CWS, THAT HE WAS GOING TO START SAYING THAT HE DOESN'T  
10 HAVE MONEY TO PAY THIS OR THAT. I THINK I TOLD YOU THIS  
11 MORNING THAT I ALREADY HAD A REPORT FROM LOCAL 70 IN OAKLAND  
12 WHERE THE MAN WAS ALWAYS LATE IN PAYING INSURANCE.

13 I WANTED TO ASSURE THE WORKERS, AFTER ALL WE WENT  
14 THROUGH, THAT WE WEREN'T GOING TO START ALL OVER, AND I WANTED  
15 TO ENSURE IT GOT COMPLETED.

16 Q. WHO ELSE DID YOU TALK TO ON THE CITY COUNCIL?

17 A. I DON'T RECALL THAT I TALKED TO ANYBODY ELSE, BECAUSE  
18 I HAD LARRY DAUGHERTY, THE PRESIDENT OF THE LOCAL, WHO LIVES  
19 IN SAN JOSE, AND I MORE OR LESS ASSIGNED THAT KIND OF WORK TO  
20 HIM. HE'S LOCATED HERE, HE CAN GO TO TALK TO DIFFERENT  
21 PEOPLE.

22 AND I ALSO ENLISTED THE NEW SECRETARY-TREASURER OF  
23 THE LABOR COUNCIL AND THEIR POLITICAL DIRECTOR.

- 24 Q. PEDRO ALLEN (PHONETIC)?
- 25 A. YES, SIR.
- 26 Q. WHEN YOU TALKED TO COUNCILMEMBER CHAVEZ ABOUT THIS,
- 27 WHAT DID SHE SAY?
- 28 A. SHE SAID THAT SHE WOULD HELP, THAT SHE UNDERSTOOD.

SUE HERFURTH, CSR #9645

578

- 1 Q. LET ME JUST TRY TO UNDERSTAND SOMETHING HERE. THERE
- 2 APPEARS TO BE SOME CONFUSION ABOUT WHAT THE EXTRA MONEY FROM
- 3 THE 2004 AMENDMENT TO THE CONTRACT IS FOR. WHETHER IT'S TO
- 4 DEFRAY THE COST OF THE ORIGINAL INCREASE IN WAGES AND
- 5 BENEFITS, WHICH REPRESENTS THE DIFFERENCE BETWEEN THE
- 6 TEAMSTERS WAGES AND BENEFITS AND LONGSHOREMEN WAGES AND
- 7 BENEFITS, OR IT'S TO DEFRAY THE COST OF FUTURE WAGE AND
- 8 BENEFIT INCREASES.
- 9 DO YOU KNOW WHICH IT WAS FOR?
- 10 A. MY EFFORTS WERE TO PAY FOR FUTURE INCREASES.
- 11 Q. BUT YOU WERE ALREADY GETTING THE INITIAL INCREASE IN
- 12 WAGE AND BENEFITS?
- 13 A. CORRECT.
- 14 Q. YOU HAD BEEN SINCE JULY 1, 2002?
- 15 A. YES, SIR.
- 16 Q. AND AS A MATTER OF FACT, YOU -- STRIKE THAT.
- 17 I'M THINKING THIS WOULD BE A GOOD TIME TO TAKE THE
- 18 EVENING RECESS.
- 19 MR. MORALES, WE HAVE ANOTHER DAY SCHEDULED TOMORROW,
- 20 BUT BECAUSE THERE HAVE BEEN SOME DIFFICULTIES GETTING ALL OF
- 21 THE DOCUMENTS FROM THE TEAMSTERS, WE HAVEN'T HAD A CHANCE TO

22 REVIEW THE DOCUMENTS, SO I DON'T THINK WE'RE GOING TO BE ABLE  
23 TO CONTINUE WITH YOU TOMORROW MORNING, WHICH MEANS YOU CAN GO  
24 HOME TONIGHT, BUT YOU'RE NOT EXCUSED. WHAT THAT MEANS IS,  
25 BECAUSE OF THE ORIGINAL SUBPOENA YOU RECEIVED, YOU'RE SUBJECT  
26 TO BEING CALLED BACK BEFORE THE GRAND JURY. DO YOU UNDERSTAND  
27 THAT?

28 A. YES, SIR.

SUE HERFURTH, CSR #9645

579

1 Q. DO YOU AGREE TO COME WHEN NOTIFIED?

2 A. YES, SIR, EXCEPT ONE THING I WANTED TO ASK YOU. FOR  
3 INSTANCE, FRIDAY AND SATURDAY I WILL BE OUT OF TOWN.

4 Q. WE DON'T MEET ON SATURDAYS.

5 A. FRIDAY I WILL BE OUT TOWN. ALSO, IN FEBRUARY --

6 Q. WE WILL TRY TO ACCOMMODATE YOUR SCHEDULE, BUT THE  
7 FOREMAN WANTS TO REMIND YOU OF AN ADMONITION THAT APPLIES, SO  
8 LISTEN CAREFULLY TO THE ADMONITION.

9 THE FOREPERSON: YOU ARE ADMONISHED NOT TO REVEAL TO  
10 ANY PERSON, EXCEPT AS DIRECTED BY THE COURT, WHAT QUESTIONS  
11 WERE ASKED OR WHAT RESPONSES WERE GIVEN, OR ANY OTHER MATTERS  
12 CONCERNING THE NATURE OR SUBJECT OF THE GRAND JURY'S  
13 INVESTIGATION WHICH YOU LEARNED DURING YOUR APPEARANCE BEFORE  
14 THE GRAND JURY, UNLESS AND UNTIL SUCH TIME AS THE TRANSCRIPT  
15 OF THIS GRAND JURY PROCEEDING IS MADE PUBLIC. VIOLATION OF  
16 THIS ADMONITION MAY BE PUNISHABLE AS A CONTEMPT OF COURT.

17 DO YOU UNDERSTAND THAT?

18 THE WITNESS: YES, SIR.

19 MR. FINKELSTEIN: MR. MORALES, IT MAY BE THAT WE

20 DON' T NEED TO CALL YOU BACK. I JUST HAVE TO LOOK AT THE REST  
21 OF THE DOCUMENTS AND MAKE A DECISION.

22 THE WITNESS: WHENEVER YOU NEED ME, I WILL BE  
23 AVAILABLE.

24 MR. FINKELSTEIN: THANK YOU, SIR. HAVE A GOOD  
25 EVENING.

26 THE FOREMAN: WE ARE ADJOURNED FOR TODAY.

27 MR. FINKELSTEIN: WE' RE NOT GOING TO BE IN SESSION  
28 TOMORROW. IT WAS HARD TO SAY HOW LONG THIS WITNESS WAS GOING

SUE HERFURTH, CSR #9645

580

1 TO TAKE. WE CAN GO OFF THE RECORD.

2 THE FOREMAN: WHY DON' T WE CLOSE THIS SESSION AND  
3 DISCUSS WHEN WE' RE GOING TO BE MEETING AGAIN.

4 (COURT WAS ADJOURNED FOR THE DAY.)

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SUE HERFURTH, CSR #9645

581

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REPORTER'S CERTIFICATE

I, SUE HERFURTH, DO HEREBY CERTIFY THAT THE FOREGOING IS A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HAD IN THE WITHIN-ENTITLED ACTION HELD ON THE 8TH DAY OF FEBRUARY, 2006.

THAT I REPORTED THE SAME IN STENO TYPE, BEING THE QUALIFIED AND ACTING OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, APPOINTED TO SAID COURT, AND THEREAFTER THE SAME WAS TRANSCRIBED BY COMPUTER UNDER MY DIRECTION AS HEREIN APPEARS.

I HAVE ADHERED TO CIVIL CODE OF PROCEDURE SECTION 237(1)(2), SIXTH DISTRICT COURT OF APPEAL MISCELLANEOUS ORDER  
Page 142

Vol 4Go~1

16 96-02, BY SEALING THROUGH REDACTION OF ALL REFERENCES, IF ANY,  
17 TO JUROR-IDENTIFYING INFORMATION, INCLUDING BUT NOT LIMITED TO  
18 NAMES, ADDRESSES AND TELEPHONE NUMBERS.

19

20 DATED THIS 26TH DAY OF JUNE, 2006.

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23 SUE HERFURTH, C. S. R.  
24 CERTIFICATE NO. 9645

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SUE HERFURTH, CSR #9645