

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

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IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE GRAND JURY

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SAN JOSE, CALIFORNIA

VOLUME 5
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MARCH 2, 2006
MARCH 6, 2006

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APPEARANCES:

FOR THE PEOPLE:	JULIUS FINKELSTEIN DEPUTY DISTRICT ATTORNEY
	JAMES GIBBONS-SHAPIRO

26
27
28

SUE HERFURTH, CSR #9645

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1 SAN JOSE, CALIFORNIA MARCH 2, 2006

2

3

PROCEEDINGS:

4

(ROLL WAS CALLED BY THE FOREPERSON, AFTER WHICH
5 THE FOLLOWING PROCEEDINGS WERE HAD.)

6

MR. FINKELSTEIN: THANK YOU VERY MUCH.

7

LADIES AND GENTLEMEN, I HAVE A FEW MORE QUESTIONS
8 FOR OUR LAST WITNESS, MR. MORALES FROM THE TEAMSTERS UNION.
9 AND IF YOU HAVE ANY QUESTIONS FOR HIM, I'LL GIVE YOU AN
10 OPPORTUNITY WHEN I FINISH TO PASS UP ANY CARDS OR NOTES OR
11 QUESTIONS, AND WE'LL BE DONE WITH THE WITNESS AFTER THAT.

12

ROBERT MORALES,

13

HAVING BEEN PREVIOUSLY SWORN, TESTIFIED ON HIS OATH AS

14

FOLLOWS:

15

EXAMINATION, CONTINUED

16

BY MR. FINKELSTEIN:

17

Q. MR. MORALES, I WANT TO THANK YOU FOR RETURNING TO
18 THE GRAND JURY THIS MORNING AND REMIND YOU, HAVING BEEN
19 PREVIOUSLY SWORN IN THIS INVESTIGATION, THAT YOU'RE STILL
20 UNDER OATH. DO YOU UNDERSTAND THAT?

21

A. YES, SIR.

22

Q. I JUST HAVE A FEW MORE QUESTIONS, AND THEN I'LL

23 GIVE THE JURORS AN OPPORTUNITY TO ASK QUESTIONS IF THEY HAVE
24 ANY.

25 NOW, WHEN YOU WERE LAST BEFORE THE GRAND JURY, WE
26 HAD BEEN DISCUSSING THE RECYCLE PLUS SERVICE RFP THAT THE
27 CITY OF SAN JOSE ISSUED IN YEAR 2000. DO YOU RECALL THAT?

28 A. YES, SIR.

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1 Q. AND, AS I UNDERSTAND IT, YOU HAD REVIEWED THAT WHEN
2 IT WAS RELEASED IN 2000, CORRECT?

3 A. YES, SIR.

4 Q. AND DID THE RECYCLE PLUS RFP REQUIRE NEW
5 CONTRACTORS TO RECOGNIZE THE TEAMSTERS AS THE SOLE AND
6 EXCLUSIVE COLLECTIVE BARGAINING REPRESENTATIVE?

7 A. NO, SIR.

8 Q. SO ANY WORKERS, DISPLACED WORKERS THAT WERE HIRED
9 BY NEW CONTRACTORS DID NOT AUTOMATICALLY BY THE RFP HAVE TO
10 BE RECOGNIZED AS TEAMSTERS, CORRECT?

11 A. NO, SIR.

12 Q. IT'S NOT CORRECT, OR YES, IT'S CORRECT?

13 A. I'M SAYING I AGREE WITH YOU.

14 Q. AND DID THE RECYCLE PLUS RFP REQUIRE NEW
15 CONTRACTORS TO BE BOUND BY EXISTING COLLECTIVE BARGAINING
16 AGREEMENTS WITH THE OLD CONTRACTORS?

17 A. ONLY IF THEY HAD SIGNED MEMORANDUMS OF
18 UNDERSTANDING WITH THE UNION.

19 Q. RIGHT. AND THE RFP ALONE DIDN'T REQUIRE THAT?

20 A. EXCEPT FOR THE PREVAILING WAGES AND RETENTION OF

21 EMPLOYEES AND LABOR PEACE THAT'S CONTAINED IN THE RFP.
22 Q. RIGHT. BUT THOSE PROVISIONS DIDN'T NECESSARILY
23 MEAN THAT A NEW CONTRACTOR HAD TO AUTOMATICALLY AGREE TO BE
24 BOUND BY THE EXISTING COLLECTIVE BARGAINING AGREEMENTS, DID
25 THEY?
26 A. NO, SIR.
27 Q. AND, FINALLY, DID THE RECYCLE PLUS RFP REQUIRE A
28 CONTRACTOR TO TREAT A NEWLY HIRED EMPLOYEE AS A SENIORITY

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1 EMPLOYEE WITH SENIORITY DETERMINED BY THE EMPLOYEE'S
2 ORIGINAL DATE OF HIRE BY THE PREVIOUS EMPLOYER?
3 A. THE ONLY THING THAT IS REQUIRED IS THAT THE RFP
4 CONTAIN THE RETENTION OF EMPLOYEES, BUT IT DOESN'T SAY
5 ANYTHING ABOUT SENIORITY.
6 Q. SAYS NOTHING ABOUT SENIORITY?
7 A. YES.
8 Q. THESE ITEMS I HAVE GONE OVER WITH YOU, THESE ARE
9 ITEMS THAT HAD TO BE NEGOTIATED WITH ANY NEW CONTRACTOR,
10 CORRECT?
11 A. THAT'S CORRECT.
12 Q. DID YOU TRY TO GET NORCAL TO ENTER INTO AN
13 AGREEMENT THAT COVERED THESE TERMS?
14 A. YES, SIR.
15 Q. WHO DID YOU SPEAK TO AT NORCAL ABOUT ENTERING INTO
16 SUCH AN AGREEMENT?
17 A. UH -- WELL, I SPOKE TO DIFFERENT INDIVIDUALS,
18 BECAUSE, AS I TOLD YOU BEFORE, WE HAVE A RELATIONSHIP WITH

19 NORCAL AND OTHER CITIES. SO I REMEMBER I SPOKE TO BILL
20 JONES, WHO AT THAT TIME WAS IN CHARGE OF THE BID, THEY WERE
21 BIDDING FOR NORCAL, AND HE WAS LIKE THE SPOKESPERSON.

22 Q. YES.

23 A. I TALKED TO ARCHIE HUMPHREY, THE EXECUTIVE VICE
24 PRESIDENT OF THE NORCAL CORPORATION.

25 Q. OKAY.

26 A. AND I SPOKE TO, I BELIEVE JOHN NICOLETTI, WHO ALSO
27 WAS, AT THAT TIME IT WAS MY UNDERSTANDING HE WAS IN LINE TO
28 ALSO BECOME, LIKE, THE GENERAL MANAGER FOR THE NEW OPERATION

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1 IF THEY WERE ABLE TO OBTAIN THE BID.

2 Q. THE CONTRACT?

3 A. YES, SIR.

4 Q. WHAT ABOUT MIKE SANGIACOMO?

5 A. NO, I DON'T RECALL THAT.

6 Q. WHAT REASONS DID YOU GIVE NORCAL FOR WHY NORCAL
7 SHOULD AGREE TO THESE ITEMS YOU WERE SEEKING?

8 A. THE REASON WAS THAT I WAS CONCERNED ABOUT THE
9 SENIORITY, I WAS CONCERNED ABOUT THE JOB SECURITY, THE
10 BENEFITS AND THE WAGES IN EXISTENCE AT THAT TIME. AND, YOU
11 KNOW, IT'S NOTHING NEW. BELIEVE IT OR NOT, WE'RE DOING THAT
12 TODAY AS I'M TALKING TO YOU, THIS WEEK WE HAVE BEEN DOING
13 THAT, BECAUSE THERE IS A NEW FRANCHISE IN SAN JOSE. WE DO
14 THAT EVERY TIME THE FRANCHISE EXPIRES.

15 Q. I UNDERSTAND THAT, MR. MORALES, BUT MY QUESTION WAS
16 A LITTLE BIT DIFFERENT, I THINK, FROM YOUR ANSWER. YOU'VE

17 TOLD US WHAT YOU SAY ARE YOUR REASONS FOR WHY YOU WANTED
18 THOSE, BUT I TAKE IT YOU HAVE NEGOTIATED FOR MANY, MANY
19 YEARS?

20 A. YES, SIR.

21 Q. WHEN YOU NEGOTIATE, YOU HAVE TO GIVE THE OTHER SIDE
22 REASONS WHY THEY SHOULD AGREE WITH YOUR POSITION, RIGHT?

23 A. YES.

24 Q. WHAT REASONS DID YOU GIVE NORCAL AS TO WHY THEY
25 SHOULD AGREE TO THESE TERMS, THE RECOGNITION OF THE
26 TEAMSTERS, THE RECOGNITION OF THE EXISTING COLLECTIVE
27 BARGAINING AGREEMENTS, AND THE RECOGNITION OF EXISTING
28 SENIORITY? THOSE ARE THE THREE THINGS YOU WANTED FROM

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1 NORCAL?

2 A. AMONG OTHERS.

3 Q. THOSE WERE PROBABLY THE THREE MOST IMPORTANT,
4 RIGHT?

5 A. THE BENEFITS, PENSION PLAN, WHICH IS VERY IMPORTANT
6 TO MY MEMBERS, AND HEALTH AND WELFARE.

7 Q. SO YOU HAD DISCUSSIONS AND NEGOTIATIONS WITH NORCAL
8 ABOUT THAT?

9 A. YES, SIR.

10 Q. DURING THE NEGOTIATIONS, YOU MUST HAVE GIVEN THEM
11 SOME REASONS WHY THEY SHOULD AGREE TO YOUR TERMS?

12 A. YES.

13 Q. WHAT REASONS DID YOU GIVE NORCAL?

14 A. I JUST TOLD YOU. I WANTED TO MAKE SURE THAT MY

15 MEMBERS WERE GOING TO BE SECURE WITH THE NEW CONTRACTORS,
16 AND THEY HAPPENED TO BE ONE OF THE NEW CONTRACTORS. I
17 WANTED TO ENSURE THAT MY MEMBERS WERE GOING TO BE TAKEN CARE
18 OF.

19 Q. ARE THOSE THE ONLY REASONS YOU GAVE NORCAL?

20 A. COULD HAVE BEEN ALSO JOB SECURITY. YOU KNOW, WE
21 WANTED TO HAVE AN ORDERLY TRANSITION. YOU KNOW, THEY WERE
22 GOING TO SELECT EMPLOYEES, THEY WERE GOING TO HAVE A
23 LOTTERY, AND THIS WAS A GENERAL COLLECTIVE BARGAINING
24 AGREEMENT CONCERN THAT I HAD FOR MY MEMBERS.

25 Q. RIGHT. BUT MR. MORALES, IS IT NOT THE CASE WHEN
26 YOU ENTER NEGOTIATIONS WITH AN EMPLOYER, IN ORDER TO GET
27 WHAT THE EMPLOYEES WANT YOU HAVE TO SHOW WHY IT'S IN THE
28 BEST INTERESTS OF THE EMPLOYER TO AGREE TO THESE THINGS,

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1 RIGHT?

2 A. YES.

3 Q. AND HOW DID YOU SHOW NORCAL THAT IT WAS IN THE BEST
4 INTERESTS OF NORCAL TO AGREE TO WHAT YOU WERE ASKING FOR?

5 A. I, ONE OF THE PROMINENT IDEAS IN MY MIND IS THAT
6 SAN JOSE IS A LABOR TOWN. AND I THINK THAT IT WOULD BE
7 BENEFICIAL FOR ANY EMPLOYER, NORCAL, GREEN TEAM, OR WHOEVER
8 ELSE, TO MAKE SURE THAT THEY HAVE SOME KIND OF AN
9 UNDERSTANDING WITH THE UNION, WHETHER THE TEAMSTERS OR ANY
10 OTHER UNION, BEING THAT SAN JOSE IS A GOOD LABOR CITY, IT
11 SEEMS TO ME, YOU KNOW, WHEN I TALKED TO THEM THAT IT WOULD
12 BE BENEFICIAL TO THEM TO HAVE SOMETHING IN WRITING TO

13 STIPULATE THEY ARE WILLING TO HONOR THE RIGHTS OF WORKERS.

14 Q. DID YOU SUGGEST TO NORCAL THAT YOU WOULD HELP
15 NORCAL GET THE CONTRACT IF NORCAL AGREED TO THESE TERMS?

16 A. NO.

17 Q. YOU NEVER MADE THAT SUGGESTION?

18 A. NO.

19 Q. DID YOU SUGGEST TO NORCAL THAT YOU WOULD BLOCK
20 NORCAL FROM GETTING A CONTRACT WITH THE CITY OF SAN JOSE IF
21 NORCAL DID NOT AGREE TO THESE TERMS?

22 A. NO.

23 Q. DID YOU ENLIST HELP FROM SOUTH BAY LABOR COUNCIL TO
24 HELP TO GET NORCAL TO AGREE TO THE TERMS?

25 A. LIKE I SAID, NORCAL WAS JUST ONE OF THEM. WE HAVE
26 OTHER CORPORATIONS TO DO THE SAME, TO SIGN THE SAME
27 DOCUMENT.

28 Q. THAT'S NOT MY QUESTION, MR. MORALES. MY QUESTION

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1 IS, DID YOU ASK ANYONE AT SOUTH BAY LABOR COUNCIL TO HELP
2 YOU PERSUADE NORCAL TO AGREE TO THESE TERMS WE HAVE BEEN
3 TALKING ABOUT.

4 A. NO.

5 Q. SO YOU DID NOT ASK AMY DEAN TO HELP PERSUADE NORCAL
6 WHY THEY SHOULD AGREE TO THE TERMS?

7 A. IT WAS NOT NECESSARY, BECAUSE NORCAL WAS WILLING TO
8 DO IT. WE HAVE A RELATIONSHIP IN OTHER CITIES. SO THERE
9 WAS NO NEED TO GET, YOU KNOW, OTHER HELP. WE NEEDED AMY
10 DEAN'S HELP LATER, BUT NOT AT THAT TIME.

11 Q. WELL, WHEN YOU SAY YOU HAD A RELATIONSHIP IN OTHER
12 CITIES, DOES THAT MEAN YOU WERE GUARANTEED TO HAVE A
13 RELATIONSHIP WITH SAN JOSE?

14 A. IF THEY GOT THE BID, I WAS HOPING THAT WE WOULD
15 CONTINUE THAT RELATIONSHIP.

16 Q. YOU WERE HOPING, BUT IT WASN'T GUARANTEED?

17 A. THE CITY COUNCIL DECIDES WHO IS GOING TO GET THE
18 BIDS, NOT THE UNION OR ANY OF THE EMPLOYEES.

19 Q. BUT IT WASN'T GUARANTEED THAT, EVEN IF NORCAL GOT
20 THE BID, IN THE ABSENCE OF AN AGREEMENT THEY WOULD SIGN WITH
21 THE TEAMSTERS, WAS IT?

22 A. I WAS HOPING THAT THEY WOULD.

23 Q. HOPING SUGGESTS TO ME IT WAS NOT GUARANTEED, AND
24 THAT'S MY QUESTION. WAS IT GUARANTEED THAT IF NORCAL GOT
25 THE BID FROM THE CITY THAT THEY WOULD SIGN THE TEAMSTERS?

26 A. I REALLY DON'T KNOW THAT.

27 Q. YOU DON'T KNOW?

28 A. YOU HAVE TO ASK NORCAL THAT.

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1 Q. DID YOU THINK IT WAS GUARANTEED THAT IF NORCAL GOT
2 THE BID FROM THE CITY, THEY WOULD SIGN WITH THE TEAMSTERS?

3 A. ONCE I GOT THE M. O. U. SIGNED.

4 Q. BEFORE YOU GOT THE M. O. U. SIGNED.

5 A. I HAD A GOOD INCLINATION THAT THEY ARE A GOOD FAIR
6 UNION-MINDED EMPLOYER AND THAT THEY WILL SIGN THIS.

7 Q. ISN'T THE REASON YOU SOUGHT AN M. O. U. FROM NORCAL
8 THAT WOULD COVER THE WORKERS IN SAN JOSE IN THE EVENT THEY

9 GOT THE BID IS BECAUSE YOU KNEW THAT IN THE ABSENCE OF SUCH
10 AN AGREEMENT IT WASN'T A CERTAINTY THAT YOUR UNION WOULD BE
11 RECOGNIZED? ISN'T THAT --

12 A. THAT CROSSED MY MIND. IT'S CROSSING MY MIND THIS
13 YEAR, THE NEW FRANCHISE IN SAN JOSE. I HAVE TO BE SURE
14 EVERYBODY SIGNS THAT M. O. U.

15 Q. THAT'S WHY YOU SOUGHT OUT AN M. O. U. ?

16 A. THAT'S CORRECT.

17 Q. BECAUSE YOU KNEW IT WASN'T AUTOMATIC, NOT
18 GUARANTEED?

19 A. THAT'S CORRECT.

20 MR. FINKELSTEIN: LET'S MARK A COPY OF THE
21 M. O. U.

22 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
23 JURY EXHIBIT 71.)

24 THE FOREMAN: SO MARKED.

25 BY MR. FINKELSTEIN:

26 Q. WE'RE LOOKING AT EXHIBIT 71. CAN YOU SEE IT FROM
27 WHERE YOU ARE?

28 A. YES, SIR.

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1 Q. AND LET'S GO TO, LET ME SHOW YOU PAGE TWO. THAT'S
2 YOUR SIGNATURE ON PAGE TWO?

3 A. YES, SIR.

4 Q. AND WOULD YOU TELL US WHAT THIS DOCUMENT IS?

5 A. THIS IS THE MEMORANDUM OF UNDERSTANDING THAT I
6 SIGNED WITH NORCAL WASTE SYSTEMS.

- 7 Q. OKAY. AND YOU SIGNED, AND ON PAGE TWO OF THE
8 DOCUMENT YOU SIGNED IT, ON JULY 10 IT LOOKS LIKE; IS THAT
9 CORRECT?
- 10 A. YES, SIR.
- 11 Q. OF 2000?
- 12 A. YES, SIR.
- 13 Q. WHO SIGNED IT ON BEHALF OF NORCAL?
- 14 A. BILL JONES.
- 15 Q. OKAY. AND DO YOU KNOW WHO DRAFTED THIS AGREEMENT?
- 16 A. MY OFFICE DID. WE DID.
- 17 Q. THE TEAMSTERS DID?
- 18 A. YES, SIR.
- 19 Q. AND WHO AT THE TEAMSTERS DRAFTED THE AGREEMENT?
- 20 A. MR. DUANE BEESON, OUR ATTORNEY.
- 21 Q. YOU HAD THE HELP OF AN ATTORNEY IN DRAFTING THIS
22 AGREEMENT?
- 23 A. YES, SIR.
- 24 Q. AND DOES THE AGREEMENT REQUIRE NORCAL TO RECOGNIZE
25 THE TEAMSTERS AS THE SOLE AND EXCLUSIVE COLLECTIVE
26 BARGAINING REPRESENTATIVE OF ANY NEW WORKERS HIRED BY NORCAL
27 IN SAN JOSE?
- 28 A. ONLY IF WE COULD PROVE THAT WE REPRESENTED THE

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- 1 EMPLOYEES.
- 2 Q. BUT YOU HAD A MAJORITY OF THE VOTES?
- 3 A. YES.
- 4 Q. SUBJECT TO DEMONSTRATING THAT, YOU HAD THE MAJORITY

5 VOTE?

6 A. IT REQUIRED NORCAL TO RECOGNIZE TEAMSTERS AS THE
7 SOLE COLLECTIVE BARGAINING REPRESENTATIVE FOR ANY NEW
8 WORKERS HIRED BY NORCAL, CORRECT. YES, SIR.

9 Q. OKAY. AND DID THE AGREEMENT REQUIRE NORCAL TO
10 AGREE TO BE BOUND BY COLLECTIVE BARGAINING AGREEMENTS THAT
11 DISPLACED EMPLOYEES HAD WITH PRIOR EMPLOYERS?

12 A. YES, SIR.

13 Q. DID THAT MEAN THAT NORCAL HAD TO PAY THE DISPLACED
14 WORKERS THE SAME WAGES AND BENEFITS THEY HAD BEEN RECEIVING
15 FROM THEIR PRIOR EMPLOYER?

16 A. YES, SIR.

17 Q. DOES THE AGREEMENT REQUIRE THAT NORCAL TREAT NEW
18 HIRES AS SENIORITY EMPLOYEES, WITH SENIORITY DETERMINED BY
19 THE EMPLOYEE'S ORIGINAL DATE OF HIRE BY THE PREVIOUS
20 EMPLOYER IN SAN JOSE?

21 A. WHEN YOU SAID NEW EMPLOYEES, ARE YOU TALKING ABOUT
22 THE EXISTING EMPLOYEES?

23 Q. NEWLY HIRED DISPLACED EMPLOYEES.

24 A. OH. YES, SIR.

25 Q. IN OTHER WORDS, IF WASTE MANAGEMENT WERE TO LOSE
26 THE CONTRACT WITH THE CITY, OR WERE TO PICK IT UP, AND IF
27 THEY WERE TO HIRE SOME WASTE MANAGEMENT TEAM EMPLOYEE, THEY
28 WOULD NOT ONLY HAVE TO HONOR THE COLLECTIVE BARGAINING

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1 AGREEMENT, THEY WOULD HAVE TO TREAT THAT EMPLOYEE AS A
2 SENIORITY EMPLOYEE WITH SENIORITY BASED ON WHEN THEY STARTED

3 WORKING FOR WASTE MANAGEMENT?
4 A. YES, SIR.
5 Q. HOW DOES SENIORITY AFFECT WAGES?
6 A. IT ONLY APPLIES TO BRAND NEW EMPLOYEES, BECAUSE THE
7 EXISTING EMPLOYEE, ONCE THEY HAVE BEEN OVER THEIR
8 PROBATIONARY PERIOD, THEY AUTOMATICALLY GET THE SAME WAGES.
9 Q. WHAT IS THE IMPORTANCE OF SENIORITY TO YOUR
10 MEMBERS?
11 A. FOR LAYOFF PURPOSES, IN CASE -- THE COMPANIES ARE
12 NOT REQUIRED, EVEN THOUGH THEY SIGNED THIS, THEY ARE NOT
13 REQUIRED TO HIRE 100 PERCENT OF THE EMPLOYEES. SO IN ORDER
14 TO BE FAIR, WE USE THE SENIORITY IN ORDER TO DETERMINE WHO
15 DOESN' T GET A JOB.
16 Q. YOU USE THE PREEXISTING SENIORITY?
17 A. YES, SIR.
18 Q. I GUESS THEORETICALLY YOU COULD HAVE A SITUATION
19 WHERE A PERSON DISPLACED FROM WASTE MANAGEMENT HAD MORE
20 SENIORITY THAN A PERSON WHO WAS ALREADY WORKING FOR NORCAL?
21 A. THERE WAS NOBODY WORKING FOR NORCAL.
22 Q. IN SAN JOSE?
23 A. THERE WAS NOBODY WORKING IN SAN JOSE FOR NORCAL.
24 Q. SO YOU WERE EXTENDING THIS TO A CITY WHERE NORCAL
25 DIDN' T HAVE AN OPERATION AT THE TIME?
26 A. NO, IT WAS NOT AN EXTENSION. THIS WAS SPECIFICALLY
27 FOR DISPLACED EMPLOYEES WHO WERE WORKING IN SAN JOSE; IT HAD
28 NOTHING TO DO WITH ANY OTHER LOCATION FOR NORCAL.

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1 Q. AND IT HAD TO DO WITH AN OPERATION THAT DIDN' T
2 EXIST AT THE TIME YOU SIGNED THIS AGREEMENT.

3 A. YES, SIR.

4 Q. OKAY. DID YOU THINK THERE WAS ANYTHING ILLEGAL
5 ABOUT THIS AGREEMENT?

6 A. NO, SIR.

7 Q. HOW IS THIS DIFFERENT FROM WHAT THE LONGSHOREMEN
8 TRIED TO DO WITH CWS REGARDING THIS NEW OPERATION THAT CWS
9 WOULD BE STARTING UP IN SAN JOSE IF NORCAL GOT THE CONTRACT?

10 A. LONGSHOREMEN, THEIR INTENTIONS WERE THAT THEY WERE
11 GOING TO, MY UNDERSTANDING IS THEY WERE GOING TO IMPORT
12 EMPLOYEES FROM OAKLAND, WHO WERE NOT EMPLOYEES OF THE CITY
13 OF SAN JOSE. AS REQUIRED BY THE AARP. THAT STATES
14 DISPLACED WORKERS ARE TO BE HIRED BY NEW VENDORS. AND IN
15 THIS CASE MY MEMBERS, SORTERS WHO WERE WORKING FOR WASTE
16 MANAGEMENT, ARE THE DISPLACED WORKERS HERE LOCATED IN THE
17 CITY OF SAN JOSE, NOT IN OAKLAND.

18 Q. SO IF CWS CAME TO YOU AND SAID, WE'RE GOING TO HIRE
19 YOUR DISPLACED WORKERS IN SAN JOSE, BUT THEY ARE GOING TO BE
20 LONGSHOREMEN, THAT WOULD BE OKAY WITH YOU?

21 A. NO.

22 Q. WHY NOT?

23 A. BECAUSE THE, THE COLLECTIVE BARGAINING AGREEMENT
24 THAT THE LONGSHOREMEN WERE BRINGING TO THE CITY WAS AN
25 INFERIOR CONTRACT. I'M NOT IN THE BUSINESS OF GIVING UP
26 MEMBERS.

27 Q. NOW, AT THE TIME THAT YOU ENTERED INTO THIS
28 AGREEMENT, DID NORCAL EMPLOY GARBAGE COLLECTORS IN SAN JOSE?

1 A. I DIDN'T UNDERSTAND.

2 Q. AT THE TIME YOU SIGNED THE M. O. U. , DID NORCAL
3 EMPLOY GARBAGE COLLECTORS AT THAT TIME?

4 A. HERE IN THE CITY OF SAN JOSE? NO.

5 Q. AND SO THIS AGREEMENT REQUIRED NORCAL TO OFFER
6 EMPLOYMENT TO WASTE MANAGEMENT AND GREEN TEAM GARBAGE
7 COLLECTORS REPRESENTED BY THE TEAMSTERS IN THE EVENT THAT
8 NORCAL'S PROPOSAL WAS ACCEPTED BY THE CITY.

9 A. WELL, MY RESPONSE TO YOU IS THAT THAT IS REQUIRED
10 BY THE CITY OF SAN JOSE. AND IN THE M. O. U. THE CITY
11 REQUIRES THAT THE NEW VENDORS ALSO WILL HAVE TO HIRE THOSE
12 EMPLOYEES WITH OR WITHOUT AN RFP.

13 Q. BUT THEY DIDN'T HAVE TO BE HIRED AS TEAMSTERS UNDER
14 THE CITY'S RFP?

15 A. NO, SIR.

16 Q. AND ARE MRF WORKERS GARBAGE COLLECTORS?

17 A. THEY ARE PART OF THE INDUSTRY, BUT THEY DON'T
18 COLLECT. THEY RECYCLE, SEPARATE.

19 Q. THEY SORT?

20 A. YES.

21 Q. SO MRF WORKERS DON'T ACTUALLY GO OUT TO THE HOMES
22 AND COLLECT THE GARBAGE, RIGHT?

23 A. THEY DO NOT.

24 Q. AND IN THIS AGREEMENT THERE'S A TERM "GARBAGE
25 COLLECTOR"; IS THAT CORRECT? WOULD YOU LIKE TO TAKE A LOOK
26 AT IT?

27 A. YES.

28 Q. LET ME SEE IF I CAN FIND THAT. JUST GIVE ME A

1 MOMENT.

2 A. YES.

3 Q. IT'S IN PARAGRAPH FOUR. IT REFERS TO IT, THE
4 SENIORITY PROVISION. DO YOU SEE THAT? IT TALKS ABOUT THE
5 SENIORITY FOR GARBAGE COLLECTORS.

6 A. YES, SIR.

7 Q. THAT'S NOT SOMETHING THAT APPLIES TO MRF WORKERS;
8 IS THAT TRUE?

9 A. THESE PARTICULAR M. O. U. S DO NOT, BUT THE CITY RFP
10 CONDITIONS ARE FOR ALL EMPLOYEES, INCLUDING SUPERVISORS,
11 CLERICAL EMPLOYEES, WHOEVER IS ATTACHED TO THESE CONTRACTS.
12 THEY HAVE THE RIGHT TO BE HIRED BY THE NEW VENDORS.

13 Q. BUT PARAGRAPH FOUR TALKS ABOUT SENIORITY RIGHTS.
14 AND THERE'S NOTHING IN THE RFP THAT GUARANTEES DISPLACED
15 WORKERS ABSENT AN M. O. U. SUCH AS THIS MAINTAINING SENIORITY
16 RIGHTS, IS THERE?

17 A. FOR WHICH ONES?

18 Q. FOR NONGARBAGE COLLECTORS.

19 A. WE HAD ANOTHER M. O. U. THAT WE SIGNED SEPARATE FOR
20 THE SORTERS WITH CWS.

21 Q. THAT WAS LATER ON. I WANT TO STAY AT THIS TIME.

22 A. THIS ONE WAS STRICTLY FOR THE EMPLOYEES WHO WORKED
23 IN THE GARBAGE COLLECTION.

24 Q. SO, AS FAR AS THIS AGREEMENT IS CONCERNED, IT DOES
25 APPLY TO THE MRF WORKERS, RIGHT?

26 A. NO, SIR.

27 Q. NO, IT DOES APPLY, OR DOESN'T APPLY?

28 A. THIS DOCUMENT DOES NOT APPLY TO THE SORTER MRF

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1 EMPLOYEES.

2 Q. AS A MATTER OF FACT, YOU UNDERSTOOD IN THE NORCAL
3 PROPOSAL THAT THE SORTING WORK WAS GOING TO BE DONE NOT BY
4 NORCAL BUT BY A DIFFERENT COMPANY, CORRECT?

5 A. NO, I DID NOT.

6 Q. YOU DIDN'T KNOW THAT CWS WAS GOING TO DO THE
7 RECYCLING?

8 A. WHEN THE DOCUMENT CAME OUT OF THE CITY, THEN I
9 FOUND OUT.

10 Q. WELL, THAT DOCUMENT CAME OUT OF THE CITY -- WHICH
11 DOCUMENT, THE PROPOSAL OR RFP?

12 A. THE RFP.

13 Q. DIDN'T THE RFP COME OUT IN APRIL?

14 A. IT COULD HAVE BEEN, YES.

15 Q. THAT WAS BEFORE THE JULY 2000 M. O. U. , RIGHT?

16 A. YES.

17 Q. AND IT'S BECAUSE YOU REVIEWED THE RFP THAT YOU
18 WANTED TO TIE DOWN THINGS THAT WEREN'T COVERED BY THE RFP
19 THAT AFFECTED YOUR MEMBERS, RIGHT?

20 A. YES, SIR.

21 Q. SO YOU KNEW THAT AT THE TIME OF THIS AGREEMENT,
22 NORCAL WAS GOING TO USE A DIFFERENT COMPANY TO DO THE
23 RECYCLING WORK, THE SORTING, CORRECT?

24 A. YES.

25 Q. YOU KNEW THAT THIS AGREEMENT DID NOT COVER CWS.

26 A. THAT'S CORRECT.

27 Q. AND CWS WASN' T A PARTY TO THIS AGREEMENT?
28 A. NO, SIR.

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1 Q. THEY DIDN' T NEGOTIATE, TAKE PART IN THE
2 NEGOTIATIONS FOR THIS AGREEMENT; IS THAT TRUE?
3 A. NOT THIS DOCUMENT, NO.
4 Q. NOW, THE LAST TIME YOU TESTIFIED BEFORE THE GRAND
5 JURY, WE SAW THAT THERE WAS AN OCTOBER 10 CITY COUNSEL VOTE,
6 THE FIRST VOTE ON THE SELECTION OF CONTRACTORS. DO YOU
7 REMEMBER THAT?
8 A. YES.
9 Q. AS A MATTER OF FACT, WE PLAYED THAT PORTION, YOU
10 SAW YOURSELF ON THE SCREEN, RIGHT?
11 A. YES, SIR.
12 Q. BEFORE THE CITY COUNCIL VOTE, THE FIRST VOTE ON THE
13 RECYCLE PLUS SERVICES, WHICH WAS ON OCTOBER 10, 2000, DID
14 YOU MEET WITH ED MCGOVERN, BILL JONES, AND AMY DEAN IN THE
15 BASEMENT ROOM OF A RESTAURANT CALLED 840 NORTH FIRST STREET?
16 A. YES, I THINK WE DID. I DON' T RECALL TOO WELL, BUT
17 I THINK I DID.
18 Q. THAT WOULD HAVE BEEN THAT MONDAY, OCTOBER 9. DO
19 YOU RECALL THAT, BEFORE THE TUESDAY, OCTOBER 10 COUNCIL
20 VOTE?
21 A. IT COULD HAVE BEEN, YEAH.
22 Q. AND WHO WAS BILL JONES AGAIN?
23 A. BILL JONES IS, AT THAT TIME HE WAS THE REGIONAL
24 DIRECTOR FOR NORCAL IN SAN JOSE.

25 Q. AND WHO IS AMY DEAN AGAIN?
26 A. AMY DEAN USED TO BE THE EXECUTIVE
27 SECRETARY-TREASURER OF THE CENTRAL LABOR COUNCIL, SANTA
28 CLARA COUNTY.

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1 Q. WHO'S ED MCGOVERN?
2 A. ED MCGOVERN, MY UNDERSTANDING IS THAT HE'S A
3 LOBBYIST.
4 Q. WAS HE WORKING ON BEHALF OF NORCAL TO HELP THEM GET
5 THE CONTRACT?
6 A. I THINK SO.
7 Q. AT THAT MEETING IN THE BASEMENT ROOM OF THE 840
8 NORTH FIRST STREET RESTAURANT, WHICH IS A FEW BLOCKS AWAY
9 FROM SAN JOSE CITY HALL, ISN'T THAT RIGHT?
10 A. YES.
11 Q. AT THAT MEETING, DID YOU TELL BILL JONES THAT YOU
12 WOULD BLOCK THE GRANT OF THE CONTRACT TO NORCAL IF THE
13 TEAMSTERS WERE NOT ALLOWED TO ORGANIZE CWS?
14 A. PROBABLY.
15 Q. I'M SORRY?
16 A. PROBABLY.
17 Q. DID YOU SAY THAT IN FRONT OF AMY DEAN AND ED
18 MCGOVERN?
19 A. PROBABLY. I KNOW THAT, MY POSITION WAS IF THEY
20 DIDN'T AGREE WITH US TO BE THE REPRESENTATIVES FOR THOSE
21 WORKERS WHO WERE MY MEMBERS, THAT I WAS GOING TO GO BEFORE
22 THE CITY COUNCIL AND OPPOSE IT.

23 Q. WHAT DID YOU TELL BILL JONES THAT WOULD MAKE HIM
24 BELIEVE THAT YOU COULD BLOCK THE GRANT OF THE CONTRACT TO
25 NORCAL?

26 A. THAT I DON'T RECALL.

27 Q. WELL, DID YOU JUST ASSUME YOUR SAYING SO WOULD
28 CARRY WEIGHT WITH BILL JONES?

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1 A. WELL, YOU KNOW, AMY DEAN WAS THERE, AND WE FELT
2 THAT LABOR, YOU KNOW, HAD A GOOD POSITION IN THE CITY, THIS
3 IS KNOWN AS A LABOR TOWN, AND THAT WITH HER SUPPORT WE WERE
4 GOING TO BE ABLE TO CONVINCING THE CITY COUNCIL, YOU KNOW,
5 THAT IF THEY DIDN'T WANT TO RECOGNIZE OUR MEMBERS FOR JOBS
6 WE WEREN'T GOING TO TELL THEM, YOU KNOW, TO APPROVE THEM.

7 Q. DID YOU REMIND BILL JONES OF RELATIONSHIPS YOU HAD
8 WITH ANYONE ON THE CITY COUNCIL?

9 A. NOT SPECIFICALLY.

10 Q. DID YOU THINK THAT YOUR REPUTATION WAS PROBABLY
11 KNOWN TO BILL JONES, BEING A STRONG ADVOCATE FOR THE
12 TEAMSTERS, IS THAT WHAT YOU WERE RELYING ON?

13 A. I WOULD HOPE SO.

14 Q. OKAY. WHAT DID AMY DEAN TELL BILL JONES AT THIS
15 MEETING?

16 A. I DON'T REMEMBER SPECIFICALLY, BUT SHE EXPRESSED
17 HER CONCERN, YOU KNOW, SHE WAS THERE TO HELP US. SHE WAS
18 THERE TO HELP MY LOCAL UNION.

19 Q. THE TEAMSTERS?

20 A. YEAH, BECAUSE I'M A MEMBER OF THE LABOR COUNCIL

21 AND, YOU KNOW, SHE WANTED THE APPROPRIATE PEOPLE TO KNOW THE
22 LABOR COUNCIL WAS BEHIND US AND WERE GOING TO HELP US IN
23 OBTAINING JUSTICE FOR OUR MEMBERS.

24 Q. DID AMY DEAN SUGGEST TO BILL JONES AS WELL THAT IF
25 THE TEAMSTERS WEREN' T ALLOWED TO ORGANIZE CWS IN SAN JOSE,
26 THAT THE LABOR COUNCIL WOULD TRY TO BLOCK THE AWARDDING OF
27 THE CONTRACT TO NORCAL?

28 A. I DON' T KNOW IF WE USED THE WORD. YOU COULD SAY

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1 ORGANIZE, BUT REMEMBER WE DIDN' T HAVE TO ORGANIZE THEM; THEY
2 WERE ALREADY OUR MEMBERS.

3 Q. CWS WAS ALREADY YOUR MEMBERS?

4 A. NO, NO, THE WORKERS THEY WERE GOING TO RETAIN WERE
5 OUR MEMBERS.

6 Q. BUT YOU DID SUGGEST TO BILL JONES THAT IF YOU
7 WEREN' T ALLOWED TO ORGANIZE CWS, YOU WERE GOING TO TRY TO
8 BLOCK THE AWARDDING OF THE CONTRACT TO NORCAL?

9 A. PROBABLY.

10 Q. IS THERE SOME DOUBT ABOUT THAT IN YOUR MIND?

11 A. WELL, BECAUSE YOU KEEP USING THE WORD ORGANIZING,
12 THAT' S WHEN YOU GO TO A GROUP OF NEW WORKERS THAT DON' T HAVE
13 A UNION AND TRY TO ORGANIZE. IN THIS CASE THEY WERE ALREADY
14 MY MEMBERS.

15 Q. MR. MORALES, I APOLOGIZE IF I' M USING THE INCORRECT
16 TERM. I WASN' T THERE, OBVIOUSLY I HAVE TO RELY ON OTHER
17 PEOPLE' S RECOLLECTIONS WHO MAY HAVE BEEN THERE.

18 WHY DON' T YOU JUST TELL US WHAT YOU DO REMEMBER

19 TELLING BILL JONES IN CONNECTION WITH CWS SIGNING WITH THE
20 TEAMSTERS.

21 A. OKAY. I TOLD HIM THAT IF NORCAL AND CWS DID NOT
22 AGREE TO RESPECT THE TERMS AND CONDITIONS OF THE PRIOR
23 CONTRACT AND RECOGNIZE OUR LOCAL UNION, THAT I WAS GOING TO
24 GO AND RECOMMEND TO THE CITY COUNCIL THAT THEY NOT BE GIVEN
25 THE CONTRACT WITH A SEPARATE UNION.

26 Q. BY PRIOR CONTRACT, YOU MEANT THE JULY 2000 M. O. U. ?

27 A. NO. THE CONTRACT THAT WAS IN EXISTENCE WITH WASTE
28 MANAGEMENT AT THE TIME THAT THESE WORKERS WERE GOING TO COME

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1 IN AND BE PART OF THE NEW VENDORS.

2 Q. IS THAT THE SAME CONTRACT THAT A NEW CONTRACTOR
3 WASN' T LEGALLY BOUND TO RECOGNIZE?

4 A. I DIDN' T UNDERSTAND.

5 Q. YOU WANTED THE NEW CONTRACTOR SEEKING A CONTRACT
6 WITH THE CITY TO BE BOUND BY A CONTRACT THAT YOUR UNION HAD
7 WITH A PRIOR EMPLOYER, RIGHT?

8 A. YES, SIR.

9 Q. THAT' S THE CONTRACT YOU' RE TALKING ABOUT?

10 A. YES.

11 Q. NOW, PRIOR TO THIS 840 NORTH FIRST STREET MEETING,
12 YOU HAD TALKED TO THE MAYOR, CORRECT?

13 A. YES.

14 Q. ABOUT YOUR CONCERNS?

15 A. YES.

16 Q. YOU TOLD HIM -- AND WHAT CONCERNS DID YOU EXPRESS

17 TO THE MAYOR?

18 A. I EXPRESSED TO THE MAYOR THAT I WANTED TO MAKE SURE
19 THAT THE NEW VENDORS, INCLUDING NORCAL, WERE TO RECOGNIZE
20 OUR WORKERS, THAT THEIR BENEFITS WERE VERY IMPORTANT, THEIR
21 SENIORITY, THEIR PENSION PLANS AND SO ON. AND I WAS LOOKING
22 FOR HELP, YOU KNOW, TO ENSURE THAT THEY WILL END UP WITH THE
23 SAME BENEFITS AND WAGES THAT THEY HAD.

24 Q. DID YOU TELL THE MAYOR BEFORE THE FIRST COUNCIL
25 VOTE THAT YOU WERE CONCERNED THAT THE WORKERS TO BE RETAINED
26 FROM WASTE MANAGEMENT MIGHT BE, MIGHT HAVE TO CHANGE UNIONS?

27 A. UH -- I DON'T KNOW IF, YOU KNOW, IF THAT -- WHAT
28 DATE, WHEN ARE YOU TALKING ABOUT?

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1 Q. THE FIRST CITY COUNCIL VOTE ON SELECTION OF NEW
2 SERVICE PROVIDERS FOR RECYCLE PLUS SERVICES WAS ON OCTOBER
3 10, 2000?

4 A. YES, SIR.

5 Q. YOU SAW LAST TIME AN EXCERPT FROM YOUR STATEMENTS
6 BEFORE THE COUNCIL ON THAT DAY, CORRECT?

7 A. YES, SIR.

8 Q. IN THAT EXCERPT, YOU MENTION A REFERENCE TO
9 INTENDING TO BLOCK, ASK FOR A DELAY OF THE VOTE, BUT
10 CHANGING YOUR MIND AFTER YOU TALKED TO THE MAYOR AND
11 POSSIBLY CITY COUNCIL MEMBERS?

12 A. YES, SIR.

13 Q. NOW I WANT TO TALK TO YOU ABOUT YOUR CONVERSATION
14 WITH THE MAYOR THAT YOU REFERRED TO IN THE OCTOBER 10

15 COUNCIL HEARING THAT MAY HAVE PUT YOU MORE AT EASE ABOUT
16 WHETHER THE PROBLEM WAS GOING TO BE SOLVED. OKAY?

17 A. YES.

18 Q. SO MY QUESTION IS, ONE OF THE BIG ISSUES YOU HAD
19 WAS THAT TEAMSTERS EMPLOYED BY WASTE MANAGEMENT NOT HAVING
20 TO CHANGE UNIONS WHEN THEY WERE HIRED BY A NEW CONTRACTOR;
21 THAT WAS A BIG CONCERN OF YOURS, RIGHT?

22 A. YES.

23 Q. DID YOU SHARE THAT CONCERN WITH THE MAYOR BEFORE
24 THE FIRST COUNCIL VOTE?

25 A. YES, SIR.

26 Q. OKAY, AND ANOTHER CONCERN YOU HAD WAS THAT THE NEW
27 SERVICE PROVIDER OR NEW CONTRACTOR NOT TRY TO HIRE THE
28 DISPLACED WORKERS AT A LOWER WAGE AND BENEFIT STRUCTURE,

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1 RIGHT?

2 A. YES.

3 Q. AND YOU SHARED THAT WITH THE MAYOR, CORRECT?

4 A. YES, SIR.

5 Q. THAT WAS BEFORE THE FIRST COUNCIL VOTE?

6 A. YES.

7 Q. THAT'S WHY YOU CHANGED YOUR MIND AND DECIDED NOT TO
8 ASK FOR A POSTPONEMENT OF THE VOTE, RIGHT?

9 A. AT THE MEETING WITH THE MAYOR, ON THE CONTRARY. I
10 LEFT HIS OFFICE VERY CONCERNED, BECAUSE HE HAD ADVISED ME
11 THAT THIS WAS A MATTER BETWEEN TWO UNIONS, AND THAT WE
12 SHOULD TRY TO RESOLVE THAT BETWEEN THE TWO UNIONS. THAT'S

13 WHY I WROTE A LETTER TO THE COUNCIL THAT I FELT HE WAS GOING
14 TO MAKE A RECOMMENDATION TO THE CITY COUNCIL WHICH I
15 CONSIDER IN MY MIND TO BE AN ILLEGAL PROPOSAL FROM THE
16 MAYOR'S OFFICE TO THE CITY COUNCIL, BECAUSE HE DIDN'T GIVE
17 ME ASSURANCES THAT OUR JOBS, THE JOBS THAT OUR MEMBERS HAD,
18 AND THE SORTERS, ESPECIALLY AT WASTE MANAGEMENT, HE DIDN'T
19 GIVE THE ASSURANCE THAT THEY WERE GOING TO BE RETAINED.

20 THAT'S WHY I WROTE THE LETTER TO THE CITY
21 COUNCIL.

22 Q. RIGHT. BUT WHEN YOU SHOWED UP AT THE CITY COUNCIL,
23 YOU SAID YOU CHANGED YOUR MIND AND DECIDED NOT TO ASK TO
24 POSTPONE IT, YOU WERE GOING TO TRUST THE MAYOR AND POSSIBLY
25 SOME COUNCILMEMBERS TO TAKE CARE OF YOUR PROBLEM.

26 A. YES, SIR.

27 Q. WHAT CHANGED YOUR MIND?

28 A. WELL, FOR ONE, THE MAYOR WENT ON THE RECORD AND

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1 SAID THAT THE POSITION OF THE CITY WAS THAT THEY WERE GOING
2 TO RETAIN OUR EMPLOYEES, THAT OUR MEMBERS WERE GOING TO HAVE
3 THEIR JOBS, AND THAT, YOU KNOW, THEY WERE GOING TO BE
4 SECURE.

5 AND ALL THE MEMBERS OF THE CITY COUNCIL EXPRESSED
6 THAT TO ME, AND AMY DEAN EXPRESSED THAT TO ME, NOT TO BE
7 CONCERNED.

8 Q. BUT ON THE RECORD, NOBODY ON THE RECORD FROM THE
9 MAYOR'S OFFICE TO THE CITY COUNCIL SAID THAT EXISTING
10 COLLECTIVE BARGAINING AGREEMENTS WERE GOING TO BE RECOGNIZED

11 BY NEW EMPLOYERS, RIGHT?

12 A. NO, SIR.

13 Q. ON THE RECORD AT THE COUNCIL MEETING ON OCTOBER 10,
14 NO ONE FROM THE MAYOR'S OFFICE OR THE CITY COUNCIL SAID THAT
15 SENIORITY WAS GOING TO FOLLOW THE WORKERS TO THEIR NEW
16 EMPLOYER; ISN'T THAT TRUE?

17 A. I DON'T RECALL ONE WAY OR THE OTHER ABOUT THAT.

18 MR. FINKELSTEIN: CAN WE SEE EXHIBIT 40, PLEASE?

19 BY MR. FINKELSTEIN:

20 Q. MR. MORALES, I AM ALMOST DONE. THANK YOU FOR YOUR
21 PATIENCE. SHOWING YOU EXHIBIT 42, CAN YOU SEE THAT?

22 A. YES, SIR.

23 Q. AND LET ME, THIS IS A MEMORANDUM FROM MAYOR
24 GONZALES DATED SEPTEMBER 16, 2004. DO YOU SEE THAT?

25 A. YES, SIR.

26 Q. OKAY. LET ME DIRECT YOUR ATTENTION TO A COUPLE OF
27 STATEMENTS IN HERE. LET'S GO TO THE FIRST PARAGRAPH ON PAGE
28 TWO, WHICH READS: "SHORTLY BEFORE THE CITY COUNCIL

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1 VOTE" -- STRIKE THAT.

2 "SHORTLY BEFORE THE CITY COUNCIL VOTED ON
3 POTENTIAL HAULERS IN 2000, IT WAS BROUGHT TO THE MAYOR'S
4 OFFICE'S ATTENTION THAT THERE WAS A POTENTIAL UNION
5 JURISDICTIONAL PROBLEM WITH THE NORCAL PROPOSAL." DO YOU
6 SEE THAT?

7 A. YES, SIR.

8 Q. AND IS THAT TRUE?

9 A. YES, SIR.

10 Q. OKAY. NOW, LET'S GO TO THE SECOND PARAGRAPH, WHICH

11 READS: "HOWEVER, IT SOON BECAME CLEAR THAT THE SITUATION

12 WAS MORE COMPLEX. AFTER COUNCIL APPROVAL, THE MAYOR'S

13 OFFICE LEARNED THAT THE WORKERS TO BE RETAINED FROM WASTE

14 MANAGEMENT WOULD BE EXPECTED TO CHANGE UNIONS." DO YOU SEE

15 THAT STATEMENT?

16 A. YES.

17 Q. IS THAT STATEMENT ACCURATE?

18 A. TO BE HONEST WITH YOU, I DON'T KNOW WHAT IT MEANS.

19 I DON'T KNOW WHAT IT SAYS. YOU KNOW, I KNOW WHAT I'M

20 READING, BUT --

21 Q. IT GOES ON TO SAY, "IT WAS THEN LEARNED THAT THIS

22 WOULD MEAN THE RETAINED WORKERS WOULD BE TAKING PAY CUTS."

23 DO YOU SEE THE NEXT SENTENCE?

24 A. YES, SIR.

25 Q. NOW, DIDN'T YOU JUST TELL US A FEW MINUTES AGO

26 BEFORE THE FIRST CITY COUNCIL VOTE YOU TALKED TO THE MAYOR

27 ABOUT YOUR CONCERNS?

28 A. YES, SIR.

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1 Q. AND THOSE CONCERNS INCLUDED YOUR CONCERN THAT

2 DISPLACED WORKERS FROM WASTE MANAGEMENT IN THE ABSENCE OF

3 SOME AGREEMENT MIGHT HAVE TO CHANGE UNIONS; THAT WAS ONE OF

4 THE CONCERNS YOU SHARED WITH THE MAYOR BEFORE THE COUNCIL

5 MEETING?

6 A. YES, SIR.

7 Q. YOU TOLD US THAT IN THE ABSENCE OF SOME AGREEMENT
8 OR SOME HELP FROM THE MAYOR, THAT THE DISPLACED WORKERS
9 MIGHT BE TAKING PAY CUTS, RIGHT?

10 A. NOT FROM THE MAYOR, FROM THE MAYOR AND THE CITY
11 COUNCIL.

12 Q. OKAY. SO IF BOTH OF THOSE STATEMENTS ARE TRUE,
13 THEN THIS STATEMENT, AFTER THE COUNCIL APPROVAL THE MAYOR'S
14 OFFICE LEARNED THAT THE WORKERS TO BE RETAINED FROM WASTE
15 MANAGEMENT WOULD BE EXPECTED TO CHANGE UNIONS, THAT'S NOT
16 ACCURATE, IS IT?

17 A. NO.

18 Q. YOU TOLD THE MAYOR ABOUT THAT BEFORE THE COUNCIL
19 APPROVAL?

20 A. YES.

21 Q. AND THE NEXT SENTENCE, "IT WAS THEN LEARNED AFTER
22 CITY COUNCIL APPROVAL THAT RETAINED WORKERS WOULD BE TAKING
23 PAY CUTS," THAT'S NOT ACCURATE EITHER, IS IT?

24 A. NOT IN ACCORDANCE WITH THIS MEMO.

25 Q. SO, BECAUSE YOU HAD TOLD THE MAYOR BEFORE THE VOTE
26 BOTH OF THOSE CONCERNS --

27 A. I HAD TOLD THE MAYOR AND THE COUNCIL MEMBERS AND
28 CITY STAFF AND EVERYBODY. THE WHOLE CITY KNEW.

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1 Q. BEFORE THE COUNCIL VOTE?

2 A. YES.

3 Q. AND WHICH COUNCIL MEMBERS DID YOU PERSONALLY TELL
4 THAT TO?

5 A. YOU KNOW, BETWEEN ME AND MY STAFF, MY BUSINESS
6 REPRESENTATIVE, WE TALKED TO PRACTICALLY EVERY MEMBER OF THE
7 CITY COUNCIL.

8 Q. WHICH COUNCIL MEMBERS DID YOU, BOB MORALES,
9 PERSONALLY TELL THAT TO?

10 A. I REMEMBER TALKING TO COUNCIL MEMBER DANDO, CHAVEZ,
11 AND I THINK HIS LAST NAME IS DIQUISTO.

12 Q. USED TO BE A FIREMAN?

13 A. YES. AND I THINK DIAZ.

14 Q. AND ARE YOU TELLING US ON YOUR OATH NOW THAT BEFORE
15 THE COUNCIL VOTE APPROVING THE SELECTION OF THE NEW RECYCLE
16 PLUS SERVICE PROVIDER, YOU TOLD THOSE PERSONS YOU JUST NAMED
17 THAT YOU WERE CONCERNED THAT WASTE MANAGEMENT EMPLOYEES WHO
18 WERE DISPLACED BY THE SELECTION OF THE NEW CONTRACTOR MIGHT
19 HAVE TO CHANGE UNIONS AND TAKE A PAY CUT?

20 A. YES, SIR.

21 Q. OKAY. LET ME SEE IF THE JURORS HAVE ANY QUESTIONS.

22 THE FOREMAN: DO ANY JURORS HAVE QUESTIONS THEY
23 WANT TO PASS TO MR. FINKELSTEIN?

24 IT APPEARS THERE ARE NONE.

25 MR. FINKELSTEIN: I DID HAVE A QUESTION SUBMITTED
26 FROM LAST TIME WHICH I DIDN'T GET TO. LET ME READ THAT.

27 THE GENTLEMEN ASKS, WHY COULDN'T THE CARPENTER'S
28 UNION REPRESENT MRF WORKERS IF THAT'S WHAT THE WORKERS

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1 WANTED?

2 THE WITNESS: THEY COULD HAVE.

3 MR. FINKELSTEIN: ANY OTHER QUESTIONS?
4 ALL RIGHT, MR. MORALES, THANK YOU AGAIN FOR COMING
5 IN. UNFORTUNATELY, YOU'RE NOT EXCUSED, WHICH MEANS YOU
6 MIGHT BE RECALLED. I DON'T THINK THAT WILL HAPPEN, BUT YOU
7 NEVER KNOW.
8 THE WITNESS: THANK YOU, SIR.
9 THE FOREMAN: DO YOU RECALL THE ADMONITION?
10 THE WITNESS: YES.
11 THE FOREMAN: DO YOU HAVE ANY QUESTIONS ABOUT
12 THAT?
13 THE WITNESS: NO, SIR.
14 THE FOREMAN: THAT ADMONITION STILL APPLIES.
15 MR. FINKELSTEIN: WHY DON'T WE TAKE OUR RECESS.
16 (A BRIEF RECESS WAS TAKEN.)
17 MICHAEL SANGIACOMO,
18 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
19 AS FOLLOWS:
20 THE WITNESS: I DO.
21 EXAMINATION
22 BY MR. FINKELSTEIN:
23 Q. GOOD MORNING, MR. SANGIACOMO. CAN YOU STATE YOUR
24 NAME AND SPELL YOUR NAME FOR THE RECORD, PLEASE.
25 A. SURE. MICHAEL SANGIACOMO, S-A-N-G-I-A-C-O-M-O.
26 Q. THANK YOU FOR APPEARING THIS MORNING. LET ME START
27 BY ASKING YOU SOME QUESTIONS RELATED TO YOUR BACKGROUND, IF
28 I MIGHT.

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- 1 A. SURE.
- 2 Q. CAN YOU TELL US HOW YOU' RE EMPLOYED?
- 3 A. I AM EMPLOYED AS A PRESIDENT AND CHIEF EXECUTIVE
4 OFFICER OF NORCAL WASTE SYSTEMS.
- 5 Q. AND SOMETIMES THAT' S REFERRED TO AS CEO; IS THAT
6 CORRECT?
- 7 A. YES.
- 8 Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?
- 9 A. I WENT TO THE UNIVERSITY OF SAN FRANCISCO FOR
10 COLLEGE. GOT A BACHELOR OF SCIENCE DEGREE WITH AN EMPHASIS
11 IN ACCOUNTING, WHICH I RECEIVED IN 1971. I PRACTICED AS A
12 CERTIFIED PUBLIC ACCOUNTANT AFTER THAT AND HAVE SOME
13 CONTINUED EDUCATION BUT NO OTHER DEGREE.
- 14 Q. ARE YOU A CERTIFIED PUBLIC ACCOUNTANT?
- 15 A. I AM, INACTIVE STATUS.
- 16 Q. SO YOU WERE LICENSED AND THEN WENT INACTIVE?
- 17 A. THAT' S CORRECT.
- 18 Q. AND YOU WERE LICENSED BY THE STATE OF CALIFORNIA AS
19 CPA?
- 20 A. YES.
- 21 Q. BUT YOUR CURRENT STATUS IS INACTIVE?
- 22 A. CORRECT.
- 23 Q. WHEN DID YOU FIRST BECOME A CPA WITH THE STATE OF
24 CALIFORNIA -- I' M SORRY, WHEN DID YOU BECOME LICENSED AS A
25 CPA BY THE STATE OF CALIFORNIA?
- 26 A. I THINK I GOT MY LICENSE IN THE EARLY PART OF 1974.
- 27 Q. DID YOU SERVE IN THE MILITARY?
- 28 A. I DID.

1 Q. AND CAN YOU TELL US WHAT YOUR MILITARY SERVICE
2 CONSISTED OF AND YOUR RANK?

3 A. IN ATTENDING THE UNIVERSITY OF SAN FRANCISCO, I
4 ALSO PARTICIPATED IN THE ROTC, RESERVE TRAINING OFFICER
5 PROGRAM.

6 Q. UPON GRADUATION WERE YOU COMMISSIONED SECOND
7 LIUTENANT?

8 A. YES. I DID 90 DAYS ACTIVE DUTY AT THE FINANCE
9 OFFICER'S BASIC COURSE AT FORT BENJAMIN HARRISON.

10 Q. THAT WAS U. S. ARMY RESERVE?

11 A. YES.

12 Q. AND WERE YOU HONORABLY DISCHARGED?

13 A. I WAS.

14 Q. WHEN WAS THAT?

15 A. I BELIEVE IT'S SOMETIME IN 1979.

16 Q. WHAT WAS YOUR RANK UPON DISCHARGE?

17 A. CAPTAIN.

18 Q. AND HOW LONG HAVE YOU BEEN A PRESIDENT AND CEO OF
19 NORCAL?

20 A. SINCE 1991.

21 Q. AND DID YOU HOLD ANY POSITIONS WITH NORCAL BEFORE
22 BECOMING PRESIDENT, CEO?

23 A. YES.

24 Q. WHICH POSITIONS DID YOU HAVE?

25 A. WELL, I JOINED A COMPANY CALLED ENVIROCAL AS THEIR
26 CHIEF FINANCIAL OFFICER IN 1983 AND HELD THAT POSITION TILL
27 WE MERGED WITH NORCAL IN 1987. FOR ABOUT EIGHT OR NINE
28 MONTHS, I THINK, I WAS THE GENERAL MANAGER OF SUNSET

1 SCAVENGER COMPANY, ONE OF THEIR OPERATING COMPANIES, AND
2 BECAME THE CHIEF FINANCIAL OFFICER OF NORCAL IN SOMETHING
3 LIKE AUGUST OF 1988. THAT'S THE POSITION I HELD UNTIL I
4 BECAME THE CEO.

5 Q. YOU BECAME CEO IN WHAT YEAR AGAIN?

6 A. I THINK IT WAS 1991.

7 Q. OKAY. AND IS NORCAL A CORPORATION?

8 A. YES, IT IS.

9 Q. IS IT A CALIFORNIA CORPORATION?

10 A. I THINK WE'RE INCORPORATED IN DELAWARE. I'M NOT
11 SURE OF THAT.

12 Q. WHO ARE THE OWNERS OF NORCAL?

13 A. THERE IS ONE OWNER, THIS IS THE NORCAL WASTE
14 SYSTEMS STOCK OWNERSHIP PLAN.

15 Q. IS THAT REFERRED TO GENERALLY AS AN ESOP, E-S-O-P?

16 A. YES.

17 Q. EMPLOYEE STOCK OWNERSHIP PLAN?

18 A. YES.

19 Q. BRIEFLY EXPLAIN TO THE JURORS HOW AN ESOP WORKS.

20 A. WELL, THERE ARE NUMBER OF FORMS OF THEM.

21 Q. HOW NORCAL'S ESOP WORKS.

22 A. OURS WAS CALLED A LEVERAGED ESOP. WE INITIALLY
23 BORROWED MONEY FROM A GROUP OF BANKS. THOSE FUNDS ALLOWED
24 US TO ACQUIRE NORCAL FROM ITS FORMER SHAREHOLDERS, WHO ALSO
25 CARRIED SOME PAPER BACK SO WE HAD SOMETHING THAT LOOKED LIKE
26 EQUITY FOR BANK PURPOSES.

27 THE ESOP ENDED UP WITH OWNERSHIP OF STOCK, AND THE

28 WAY THE TAX LAWS WORK FOR ESOPS, AS YOU PAY DOWN THE DEBT

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1 YOU INCURRED TO BUY THE STOCK, YOU RELEASE SHARES THAT ARE
2 ALLOCATED TO ACCOUNTS FOR THE VARIOUS EMPLOYEES ON THE BASIS
3 OF THEIR COMPENSATION AND PAID TO ALL ESOP PARTICIPANTS.

4 Q. I TAKE IT MOST IF NOT ALL EMPLOYEES HAVE SOME
5 OWNERSHIP IN THE COMPANY?

6 A. THE VAST MAJORITY, YES.

7 Q. I TAKE IT NORCAL PROVIDES SOLID WASTE AND RECYCLING
8 COLLECTIONS BOTH DISPOSAL SERVICE THROUGHOUT CALIFORNIA?

9 A. THAT'S CORRECT.

10 Q. DOES IT OPERATE OUTSIDE OF CALIFORNIA?

11 A. AT THIS POINT WE HAVE ONE OPERATION OUTSIDE THE
12 STATE.

13 Q. WHERE IS THAT?

14 A. IN LINCOLN COUNTY, NEVADA.

15 Q. COULD YOU GIVE US SOME SENSE OF HOW LARGE OR SMALL
16 A CORPORATION NORCAL IS, HOW MANY EMPLOYEES IT HAS?

17 A. SURE. FOR OUR FISCAL YEAR, WHICH IS SEPTEMBER 30,
18 LAST YEAR ENDED SEPTEMBER 30, 2005. WE DID SOMEWHERE AROUND
19 447 MILLION DOLLARS REVENUE. WE HAVE SOMEWHERE BETWEEN 21
20 AND 22 HUNDRED EMPLOYEES.

21 Q. OKAY. WHICH COMMUNITIES IN SANTA CLARA COUNTY DOES
22 NORCAL SERVE?

23 A. SAN JOSE, CUPERTINO, LOS ALTOS, LOS ALTOS HILLS,
24 GILROY, MORGAN HILL AND MOUNTAIN VIEW, AND SOME OF THE
25 UNINCORPORATED AREAS OF THE COUNTY.

- 26 Q. WHAT ABOUT MILPITAS?
27 A. NO.
28 Q. AND WHAT ABOUT --

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- 1 A. WE MAY HAVE SOME COMMERCIAL BUSINESS THERE, I'M NOT
2 POSITIVE.
3 Q. WHAT ABOUT THE CITY OF SANTA CLARA?
4 A. YES. WE DO HAVE A CURBSIDE RECYCLING CONTRACT
5 THERE.
6 Q. OKAY. CURRENTLY NORCAL PROVIDES RECYCLE PLUS
7 SERVICES FOR CITY OF SAN JOSE?
8 A. THAT'S CORRECT.
9 Q. AND DOES NORCAL PROVIDE THOSE SERVICES THROUGH A
10 SUBSIDIARY?
11 A. YES.
12 Q. WHAT'S THE NAME OF THAT SUBSIDIARY?
13 A. I BELIEVE IT'S NORCAL WASTE SYSTEMS OF SAN JOSE,
14 INC.
15 Q. IS THAT GENERALLY HOW NORCAL STRUCTURES ITS
16 CONTRACTS, IT CREATES A SUBSIDIARY FOR A CERTAIN COMMUNITY?
17 A. GENERALLY THE COMMUNITIES, MANY COMMUNITIES
18 REQUIRE, FOR EXAMPLE, AUDITED FINANCIAL STATEMENTS AND
19 OPERATIONS. IT'S EASIER TO DO IT IF THE CORPORATION HAVE A
20 SINGLE ENTITY AUDITED FOR THAT PURPOSE.
21 Q. WHO IS THE CURRENT HEAD OF NORCAL WASTE SYSTEMS OF
22 SAN JOSE?
23 A. WELL, THE GENERAL MANAGER IS A FELLOW, MARK

24 A-R-S-E-N-A-U-L-T.

25 Q. WHO WAS, WHO HELD THAT POSITION BEFORE HE DID?

26 A. JOHN NICOLETTI.

27 Q. NOW, I THINK WE HAVE GONE THROUGH ALL THE
28 BACKGROUND, SO WHY DON'T WE MOVE TO WHAT BRINGS US ALL HERE

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1 TODAY. IN THE YEAR OF 2000, DID THE CITY OF SAN JOSE ISSUE
2 A REQUEST FOR PROPOSALS FOR RECYCLE PLUS SERVICES?

3 A. I BELIEVE IT WAS IN 2000, YES.

4 MR. FINKELSTEIN: CAN WE SEE EXHIBIT 3?

5 BY MR. FINKELSTEIN:

6 Q. WHY DON'T YOU TAKE A LOOK AT EXHIBIT 3, WHICH IS
7 THE CITY'S RFP, AND SEE IF THAT HELPS YOUR RECOLLECTION. I
8 BELIEVE THAT'S A CERTIFIED COPY FROM THE CITY.

9 A. IT LOOKS FAMILIAR.

10 Q. I TAKE IT YOU REVIEWED THE RFP AT THE TIME IT WAS
11 RELEASED BY THE CITY OF SAN JOSE?

12 A. I'M PRETTY SURE I DID, YES.

13 Q. DO YOU RECALL WHEN SERVICES WERE SUPPOSED TO
14 COMMENCE UNDER THE RFP?

15 A. YES. JULY 1ST OF 2002.

16 Q. OKAY. AND IS IT YOUR RECOLLECTION THAT AMONG THE
17 REQUIREMENTS IN THE RFP WAS A REQUIREMENT THAT CONTRACTORS
18 DEMONSTRATE COMMITMENT TO WORKER RETENTION AND LABOR PEACE?

19 A. I HAVE A RECOLLECTION OF THAT, YES.

20 Q. IF YOU CAN MOVE THE MIKE A LITTLE CLOSER TO YOU.

21 A. SURE.

22 Q. DID WORKER RETENTION REFER TO RETENTION OF WORKERS
23 WHO WOULD BE DISPLACED AS A RESULT OF SELECTION OF A NEW
24 VENDOR?

25 A. I GUESS YOU COULD DESCRIBE IT THAT WAY, YES.

26 Q. WELL, HOW WOULD YOU DESCRIBE IT?

27 A. I GUESS IT WOULD BE WORKERS WHO WOULD BE DISPLACED
28 IF THE THEN CURRENT CONTRACTORS DIDN' T GET RENEWAL.

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1 Q. WHAT ABOUT THAT, DID THEY HAVE TO BE HIRED ON BY
2 THE NEW VENDOR, IS THAT THE IDEA?

3 A. YES. THOSE WOULD AT LEAST BE USED AS YOUR INITIAL
4 EMPLOYEE POOL TO DRAW FROM.

5 Q. THEY SORT OF HAD A RIGHT OF FIRST REFUSAL, IF YOU
6 WILL, TO THE NEW JOBS?

7 A. YOU COULD SAY THAT.

8 Q. DID LABOR PEACE REFER TO MINIMIZING THE LIKELIHOOD
9 OF LABOR DISRUPTIONS?

10 A. YES.

11 Q. IS THAT HOW YOU UNDERSTOOD THAT TERM?

12 A. IN GENERAL.

13 Q. BASED, I TAKE IT YOU KNOW NORCAL EVENTUALLY
14 SUBMITTED A PROPOSAL IN RESPONSE TO THE RFP?

15 A. YES.

16 Q. WAS IT YOUR UNDERSTANDING WITH REGARD TO THE RFP
17 THAT THERE WAS ANYTHING IN THE RFP THAT REQUIRED DISPLACED
18 WORKERS TO RECEIVE THE SAME WAGES AND BENEFITS THEY HAD BEEN
19 RECEIVING FROM THE FORMER SERVICE PROVIDER?

20 A. IT SEEMS TO ME THAT THE RFP, THERE WAS PROVISION
21 FOR A PREVAILING WAGE FOR DRIVERS, COLLECTION WORKERS IN
22 SAN JOSE. YOU HAD TO AT LEAST DO THAT.

23 Q. OKAY. YOUR UNDERSTANDING WAS THE COLLECTION
24 WORKERS WERE SUBJECT TO THE CITY'S PREVAILING WAGE POLICY,
25 CORRECT?

26 A. YES.

27 Q. BECAUSE THEY WORK ON THE CITY STREETS.

28 A. I'M NOT SURE I UNDERSTOOD WHAT THE REASON WAS.

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1 Q. WHAT ABOUT THE MRF WORKERS? YOU'RE FAMILIAR WITH
2 THAT TERM, MRF?

3 A. YES.

4 Q. FOR THE MRF WORKERS WHO WORKED ON PRIVATE PROPERTY
5 SORTING RECYCLABLES, WERE THEY SUBJECT TO THE PREVAILING
6 WAGE?

7 A. MY UNDERSTANDING AT THE TIME WAS THERE WAS NO
8 PREVAILING WAGE PROVISION FOR MRF WORKERS.

9 Q. WITH REGARD TO MRF WORKERS, THERE WAS NOTHING IN
10 THE RFP THAT GUARANTEED DISPLACED MRF WORKERS WOULD RECEIVE
11 NO LESS THAN THE EXISTING WAGES AND BENEFITS THAT THEY HAD
12 BEEN RECEIVING, CORRECT?

13 A. THAT WAS MY UNDERSTANDING, YES.

14 Q. WAS THERE ANYTHING IN THE RFP THAT REQUIRED
15 DISPLACED WORKERS TO BE REPRESENTED BY THE UNION THEY HAD
16 BEEN REPRESENTED BY AT THE FORMER EMPLOYER?

17 A. NOTHING THAT I RECALL.

18 Q. WAS THERE ANYTHING IN THE RFP THAT REQUIRED A NEW
19 SERVICE PROVIDER TO GIVE A PREFERENCE TO A PARTICULAR UNION?

20 A. AGAIN, NOT THAT I'M AWARE OF.

21 Q. WAS THERE ANYTHING IN THE RFP THAT REQUIRED YOUR
22 PROPOSED SUBCONTRACTOR, CWS, TO RECOGNIZE THE TEAMSTERS AS
23 THE BARGAINING REPRESENTATIVE FOR ITS MRF WORKERS IN
24 SAN JOSE?

25 A. NOTHING I REMEMBER.

26 Q. AND WAS THERE ANYTHING IN THE RFP THAT REQUIRED NEW
27 CONTRACTORS TO AGREE TO BE BOUND BY COLLECTIVE BARGAINING
28 AGREEMENTS THAT DISPLACED EMPLOYEES HAD WITH PRIOR

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1 EMPLOYERS?

2 A. NOTHING SPECIFIC THAT I CAN RECALL.

3 Q. OKAY. AND WAS THERE ANYTHING IN THE RFP THAT
4 REQUIRED A NEW CONTRACTOR TO TREAT NEWLY HIRED EMPLOYEES AS
5 SENIORITY EMPLOYEES WITH SENIORITY DETERMINED BY THE
6 EMPLOYEE'S ORIGINAL DATE OF HIRE BY THE PREVIOUS EMPLOYER IN
7 SAN JOSE?

8 A. I DON'T KNOW.

9 Q. I'M SORRY?

10 A. I DON'T KNOW.

11 Q. SO YOU THOUGHT THE RFP MIGHT HAVE REQUIRED A NEW
12 CONTRACTOR TO BE BOUND BY THE EMPLOYEE'S SENIORITY BASED ON
13 PRIOR EMPLOYMENT WITH A DIFFERENT COMPANY?

14 A. I DON'T KNOW IF THERE WAS ANYTHING IN THE RFP ABOUT
15 THAT OR NOT.

16 Q. OKAY. LET ME SHOW YOU EXHIBIT 71. COULD YOU READ
17 THAT EXHIBIT TAG FROM WHERE YOU ARE?

18 A. I CAN SEE THAT.

19 Q. DO YOU RECALL IN JULY OF 2000 ENTERING INTO AN
20 M. O. U. WITH TEAMSTERS LOCAL 350 TO DEAL WITH ITEMS THAT
21 MIGHT COME UP REGARDING REPRESENTATION, WAGES AND BENEFITS
22 AND SENIORITY IN THE EVENT THAT NORCAL WAS AWARDED THE
23 CONTRACT WITH THE CITY OF SAN JOSE?

24 A. I HAVE A VAGUE RECOLLECTION OF THAT, YES, SIR.

25 Q. LET ME SHOW YOU PAGE TWO OF THIS EXHIBIT. DO YOU
26 RECOGNIZE MR. JONES' SIGNATURE ON THIS AGREEMENT?

27 A. YEAH, I SEE THE SIGNATURE.

28 Q. DO YOU RECOGNIZE THAT TO BE MR. JONES' SIGNATURE?

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1 A. I DON'T REMEMBER HIS SIGNATURE.

2 Q. DO YOU RECOLLECT THAT NORCAL DID ENTER INTO AN
3 AGREEMENT WITH LOCAL 350 IN JULY OF 2000 BEFORE THE FIRST
4 CITY COUNCIL VOTE ON THE RECYCLE PLUS SERVICE CONTRACTORS?

5 A. THAT SOUNDS CORRECT.

6 Q. YEAH. I TAKE IT MR. JONES WAS SOMEONE WHO REPORTED
7 TO YOU?

8 A. HE DID NOT REPORT TO ME DIRECTLY, NO.

9 Q. WHO DID HE REPORT DIRECTLY TO?

10 A. TO OUR CHIEF OPERATING OFFICER, A FELLOW NAMED
11 ARCHIE HUMPHREY.

12 Q. ARCHIE HUMPHREY REPORTED TO YOU?

13 A. YES.

14 Q. DID MR. JONES HAVE AUTHORITY TO ENTER AN AGREEMENT
15 LIKE THIS WITHOUT YOUR SIGNING ON THE AGREEMENT?

16 A. WITHOUT MR. HUMPHREY, PROBABLY NOT. WITHOUT MINE,
17 YES.

18 Q. WE HAVE BEEN GOING ABOUT AN HOUR. WHY DON'T WE
19 GIVE THE REPORTER A SHORT BREAK.

20 THE FOREMAN: LET'S TAKE A TEN-MINUTE BREAK.

21 MR. FINKELSTEIN: WE NEED TO GIVE THE WITNESS AN
22 ADMONITION.

23 THE FOREPERSON: YOU ARE ADMONISHED NOT TO REVEAL
24 TO ANY PERSON, EXCEPT AS DIRECTED BY THE COURT, WHAT
25 QUESTIONS WERE ASKED OR WHAT RESPONSES WERE GIVEN OR ANY
26 OTHER MATTERS CONCERNING THE NATURE OR SUBJECT OF THE GRAND
27 JURY'S INVESTIGATION WHICH YOU LEARNED DURING YOUR
28 APPEARANCE BEFORE THE GRAND JURY UNLESS AND UNTIL SUCH TIME

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1 AS THE TRANSCRIPT OF THIS GRAND JURY PROCEEDING IS MADE
2 PUBLIC. VIOLATION OF THIS ADMONITION IS PUNISHABLE AS
3 CONTEMPT OF COURT.

4 DO YOU UNDERSTAND THAT?

5 THE WITNESS: I DO.

6 (A SHORT RECESS WAS TAKEN.)

7 THE FOREMAN: LET THE RECORD SHOW THAT ALL JURORS
8 ARE PRESENT.

9 BY MR. FINKELSTEIN:

10 Q. MR. SANGIACOMO, I'LL JUST REMIND YOU THAT YOU ARE
11 STILL UNDER OATH, HAVING BEEN PREVIOUSLY SWORN IN THIS

12 MATTER. LET ME ASK YOU TO TAKE A LOOK AT GRAND JURY EXHIBIT
13 4, WHICH WE RECEIVED FROM THE CITY OF SAN JOSE. COULD YOU
14 TELL US WHAT THAT DOCUMENT IS, PLEASE?

15 A. IT LOOKS LIKE NORCAL'S RESPONSE TO THE RFP.

16 Q. AND IF YOU LOOK AT ONE OF THE EARLIER PAGES, I
17 THINK YOUR SIGNATURE IS THERE; IS THAT CORRECT?

18 A. THERE'S AT LEAST ONE OF MINE, YES.

19 Q. WHEN WAS THE PROPOSAL SUBMITTED?

20 A. IT'S DATED JULY 14, 2000.

21 Q. AND THE NORCAL PROPOSAL TO RECYCLE PLUS SERVICE IN
22 CITY OF SAN JOSE, DID THAT INCLUDE SUBCONTRACTING OUT THE
23 RECYCLING SERVICES TO CALIFORNIA WASTE SOLUTIONS?

24 A. YES, FOR THE PROCESSING OF RECYCLEABLES.

25 Q. FOR THE SEPARATING OF RECYCLEABLES AND PROCESSING?

26 A. YES, SIR --

27 Q. FOR THE SEPARATING OF RECYCLEABLES AND THE
28 PROCESSING OF THEM?

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1 A. YES. WE WOULD DELIVER THEM IN COLLECTION VEHICLES,
2 AND THEY WOULD TAKE IT FROM THERE.

3 Q. WAS IT CONTEMPLATED THAT CWS WOULD HAVE ITS OWN
4 FACILITY IN THE CITY OF SAN JOSE?

5 A. YES.

6 Q. AND WAS THERE ANYTHING IN THE RFP THAT PROHIBITED
7 CONTRACTING OUT THE RECYCLING PORTION OF THE PROPOSAL?

8 A. NO, NOT THAT I CAN RECALL.

9 Q. AND I BELIEVE IN NORCAL'S PROPOSAL THERE WAS A COPY

10 OF A WRITTEN AGREEMENT WITH CWS FOR RECYCLING SERVICES. WHY
11 DON'T YOU LOOK AT THE APPENDIX I OF EXHIBIT 4 AND SEE IF
12 THAT AGREEMENT IS THERE.

13 A. YES, IT IS.

14 Q. AND DID YOU PARTICIPATE IN THE PREPARATION OF THIS
15 PROPOSAL?

16 A. TO SOME DEGREE, YES.

17 Q. WHAT WAS YOUR PARTICIPATION?

18 A. BASICALLY, IT WOULD BE THE PROCESS OF MAKING SURE
19 WE THOUGHT THE FINANCIAL DATA WAS ACCURATE AND THAT THE
20 PROPOSAL MADE GENERAL SENSE FOR THE KIND OF, TO RESPOND TO
21 WHAT THE CITY WAS ASKING FOR.

22 Q. WHO ARE THE AUTHORS OR DRAFTERS OF THE PROPOSAL FOR
23 NORCAL, DO YOU RECALL?

24 A. PROBABLY A NUMBER OF PEOPLE. I'LL TELL YOU THE
25 ONES I CAN REMEMBER. BILL JONES WAS DEFINITELY INVOLVED.
26 HE WAS THE GROUP MANAGER FOR OUR SOUTH BAY BUSINESS. HIS
27 CONTROLLER, A FELLOW NAMED RICHARD LANCER, WAS RESPONSIBLE
28 FOR DOING THE FINANCIAL PERFORMANCE, FINANCIAL ANALYSIS.

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1 JOHN NICOLETTI WAS, I BELIEVE, RESPONSIBLE FOR
2 ACCUMULATING THE OPERATIONAL DATA, HOW MANY ROUTES AND
3 CONTAINERS AND EMPLOYEES WOULD BE NEEDED.

4 I THINK WE USED AN INDIVIDUAL NAMED BRUCE MURPHY
5 TO DO MOST OF THE ACTUAL WRITING OF THE RESPONSE.

6 Q. DID NORCAL USE THE SERVICES OF AN ATTORNEY TO
7 REVIEW AND ASSIST IN THE PROPOSAL?

- 8 A. WE PROBABLY DID AT LEAST REVIEW THE CITY'S FORMER
9 CONTRACT THAT WE WOULD BE, THAT WE WERE ASKED TO SIGN.
- 10 Q. WHO WOULD THAT BE?
- 11 A. I'M PRETTY SURE IT WAS TODD THOMPSON AT THE HOWARD
12 RICE LAW FIRM.
- 13 Q. AND WHAT WERE THE FINANCIAL TERMS OF THE NORCAL/CWS
14 AGREEMENT FOR THIS PROPOSAL?
- 15 A. I'M SORRY, FINANCIAL --
- 16 Q. YOU TOLD US THAT NORCAL PROPOSED TO CONTRACT OUT
17 THE RECYCLING PORTION OF THE JOB TO ANOTHER COMPANY,
18 CALIFORNIA WASTE SOLUTIONS OR CWS, CORRECT?
- 19 A. YES.
- 20 Q. AND I WANT YOU TO TELL US WHAT THE FINANCIAL
21 ARRANGEMENT WAS BETWEEN NORCAL AND CWS UNDER THAT
22 SUBCONTRACT.
- 23 A. IT SEEMS TO ME WE, I HONESTLY DON'T REMEMBER, BUT I
24 HAD THOUGHT WE HAD AGREED TO PAY THEM SOME AMOUNT OF MONEY
25 PER TON DELIVERED FOR THEM TO PROCESS IT.
- 26 Q. IN FAIRNESS, MR. SANGIACOMO, NORCAL'S ENTIRE
27 BUSINESS IS ESSENTIALLY PUBLIC CONTRACTS, IS IT NOT?
- 28 A. A LARGE MAJORITY OF OUR BUSINESS ARE PUBLIC

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- 1 CONTRACTS, YES.
- 2 Q. SO RFPS --
- 3 A. WELL, YOU KNOW WHAT, THAT IS PROBABLY A
4 MISSTATEMENT.
- 5 Q. WHAT IS CORRECT?

6 A. 40 SOMETHING PERCENT OF OUR REVENUES ARE WITH THE
7 CITY OF SAN FRANCISCO, FROM THE CITY OF SAN FRANCISCO, AND
8 WE DO NOT HAVE A CONTRACT WITH THEM.

9 Q. YOU DO NOT HAVE CONTRACT WITH THE CITY OF SAN
10 FRANCISCO?

11 A. NOT FOR THE BULK OF SERVICES WE PROVIDE, NO.

12 Q. IN ANY EVENT, WOULD IT BE FAIR TO SAY THAT MANY OF
13 YOUR BUSINESS OPPORTUNITIES ARE WITH PUBLIC ENTITIES?

14 A. YES, THEY ARE.

15 Q. AND THOSE PUBLIC ENTITIES TYPICALLY REQUIRE A
16 WRITTEN PROPOSAL IN RESPONSE TO AN RFP?

17 A. MOST OF THE BUSINESS WE HAVE PROBABLY WE'VE HAD FOR
18 A LONG, LONG TIME AND NEVER DID RESPOND TO A RFP.

19 Q. ARE YOU SAYING THAT IN THE YEAR 2000 WHEN NORCAL
20 SUBMITTED THIS PROPOSAL IN RESPONSE TO THE CITY'S RFP THAT
21 THAT WAS A NEW EXPERIENCE FOR NORCAL?

22 A. NEW, NO, BUT IT'S BECOMING MORE AND MORE COMMON
23 THESE DAYS THAN IT USED TO BE.

24 Q. LOOK AT THE AGREEMENT BETWEEN NORCAL AND CWS,
25 EXHIBIT 4, WHICH IS APPENDIX I OF EXHIBIT 4 AND SEE IF THAT
26 REFRESHES YOUR RECOLLECTION ABOUT THE FINANCIAL TERMS IN THE
27 NORCAL AND CWS AGREEMENT. HAVE ARE YOU LOCATED THAT?

28 A. YES, I'M LOOKING AT IT.

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1 Q. TAKE A MOMENT AND TAKE A LOOK AT IT AND SEE IF THAT
2 HELPS.

3 A. YES, I HAVE IT.

4 Q. AM I CORRECT THAT IN FACT NORCAL WAS NOT GOING
5 TO -- AS CONTEMPLATED ORIGINALLY, NORCAL WAS NOT GOING TO
6 MAKE ANY PAYMENTS TO CWS FOR CWS' S HANDLING OF THE
7 RECYCLEABLES, WAS IT?

8 A. THAT' S CORRECT.

9 Q. CWS WAS GOING TO LOOK TO THE RESALE OF RESORTED
10 RECYCLEABLES TO MAKE ITS PROFIT, RIGHT?

11 A. THAT' S CORRECT.

12 Q. AND UNDER THAT ORIGINAL DEAL THAT WAS SUBMITTED TO
13 THE CITY, IT WAS CONTEMPLATED THAT CWS WOULD BE USING
14 LONGSHOREMEN TO DO THE RECYCLE, ILWU?

15 A. AS I RECALL THE ORIGINAL PROPOSAL WAS THAT THEY
16 WOULD USE LONGSHOREMEN, AS THEY HAD A PREVIOUS RELATIONSHIP
17 WITH THEM IN OTHER PLANTS.

18 Q. AND DID YOU UNDERSTAND AT THE TIME THAT THIS DEAL
19 WAS PUT TOGETHER AND OFFERED TO THE CITY THAT THE
20 LONGSHOREMEN RECYCLING WORKERS MADE SUBSTANTIALLY LESS IN
21 WAGES AND BENEFITS THAN THE TEAMSTER RECYCLING WORKERS?

22 A. I CAME TO LEARN THAT, YES.

23 Q. NOW, AT THE TIME THAT NORCAL SUBMITTED THIS
24 PROPOSAL TO THE CITY OF SAN JOSE, WAS CWS A COMPANY THAT WAS
25 BASED IN OAKLAND?

26 A. I THINK THAT WAS THEIR BASE OF OPERATION. I KNOW
27 THEY HAD OFFICES IN A FACILITY.

28 Q. AT THE TIME NORCAL SUBMITTED THIS PROPOSAL TO THE

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1 CITY OF SAN JOSE, IS IT TRUE THAT CWS DID NOT HAVE AN

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OPERATION IN SAN JOSE?

A. THAT WAS MY UNDERSTANDING, YES.

Q. THEY HAD A RECYCLING FACILITY IN OAKLAND AT THE TIME, CORRECT?

A. THAT'S CORRECT.

Q. AND AT THE TIME THAT NORCAL SUBMITTED THIS PROPOSAL TO THE CITY, DID CWS HAVE AN EXISTING COLLECTIVE BARGAINING AGREEMENT WITH THE LONGSHOREMEN'S UNION, ILWU LOCAL 6, THAT COVERED CWS'S MRF WORKERS IN OAKLAND?

A. THAT WAS MY UNDERSTANDING, YES.

Q. AND DID THE NORCAL PROPOSAL TO THE CITY INCLUDE RECOGNIZING THE LONGSHOREMEN'S UNION AS THE BARGAINING REPRESENTATIVE TO CWS'S MRF WORKERS IN SAN JOSE IN THE EVENT THAT NORCAL GOT THE CONTRACT?

A. THAT WAS OUR UNDERSTANDING, BUT I DON'T RECALL IF THERE WAS ANYTHING IN THE PROPOSAL THAT STATED THAT.

Q. THE PROPOSAL DOESN'T SET OUT THE COLLECTIVE BARGAINING AGREEMENTS AND PROPOSED UNION REPRESENTATION?

A. IT MAY, I JUST DON'T REMEMBER.

Q. FAIR ENOUGH. I GUESS IF IT'S IN THERE, IT'S IN THERE, AND IF IT'S NOT, IT'S NOT. WE CAN ALL TAKE A LOOK AT THAT IF IT BECOMES IMPORTANT, THAT'S FINE.

A. SURE.

Q. NOW, DO YOU RECALL THAT ONE OF THE EXISTING CONTRACTORS IN SAN JOSE IN 2000 WAS WASTE MANAGEMENT?

A. I DO REMEMBER THAT, YES.

Q. DO YOU RECALL THAT WASTE MANAGEMENT USED TEAMSTERS

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1 TO DO THE RECYCLING WORK?

2 A. THAT'S MY RECOLLECTION, YES.

3 Q. DID THAT MEAN THAT BASED ON THAT PROPOSAL THAT HAD
4 BEEN ACCEPTED BY THE CITY WITHOUT ANY CHANGES OF
5 OBLIGATIONS, THE WASTE MANAGEMENT TEAMSTER WORKERS WHO WERE
6 OFFERED JOBS BY CWS TO DO RECYCLING WORK WOULD BE CHANGING
7 UNIONS?

8 A. THAT WOULD HAVE BEEN WHAT HAPPENED, YES.

9 Q. DO YOU THINK THERE WAS ANYTHING IMPROPER ABOUT CWS
10 ATTEMPTING TO EXTEND ITS COLLECTIVE BARGAINING AGREEMENT
11 WITH THE LONGSHOREMEN'S UNION TO A NEW FACILITY IN SAN JOSE?

12 A. NO.

13 MR. FINKELSTEIN: CAN WE SEE EXHIBIT 5, PLEASE.
14 BY MR. FINKELSTEIN:

15 Q. LET ME SHOW YOU EXHIBIT 5, WHICH I HAVE UP ON THE
16 SCREEN. DO YOU SEE THE EXHIBIT TAG THAT SHOWS EXHIBIT 5?

17 A. I SEE THE GREEN THING COVERING SOME PART OF WHAT
18 YOU WANT --

19 Q. I WILL FLIP IT OVER, AND WHAT WE HAVE HERE IS
20 A -- WE HAVE A MEMORANDUM DATED SEPTEMBER 22ND, 2000 FROM
21 CARL MOSHER, THEN HEAD OF THE ENVIRONMENTAL SERVICES
22 DEPARTMENT OF THE CITY OF SAN JOSE, MAKING RECOMMENDATIONS
23 ON THE SELECTION OF RECYCLE PLUS CONTRACTORS. DO YOU SEE
24 THAT.

25 A. YES.

26 Q. LET ME --

27 A. I SEE THAT, YES.

28 Q. LET ME HAND IT TO YOU. HAVE YOU SEEN A COPY OF

1 THIS DOCUMENT BEFORE TODAY?

2 A. I'M PRETTY SURE I HAVE, YES.

3 Q. NORCAL MADE A DECISION TO COMPETE FOR A CONTRACT
4 FROM THE CITY OF SAN JOSE IN 2000, RIGHT?

5 A. YES.

6 Q. AND THIS WAS STAFF'S RECOMMENDATION TO THE COUNCIL
7 AS TO WHICH CONTRACTOR SHOULD BE VOTED ON BY THE COUNCIL,
8 CORRECT?

9 A. THAT'S WHAT IT LOOKS LIKE, YES.

10 Q. I TAKE IT IT WAS A DOCUMENT OF SOME INTEREST TO YOU
11 SINCE YOU WANTED TO KNOW WHERE STAFF STOOD ON YOUR PROPOSAL,
12 RIGHT?

13 A. THAT'S FAIR.

14 Q. THEREFORE YOU WOULD HAVE BEEN INTERESTED IN GETTING
15 A COPY OF THAT DOCUMENT AS SOON AS IT WAS RELEASED.

16 A. AGAIN, PROBABLY FAIR, YES.

17 Q. I UNDERSTAND IT'S FAIR; IS THAT ALSO ACCURATE?

18 A. I BELIEVE IT IS. I BELIEVE THIS IS THE DOCUMENT
19 THAT I HAVE SEEN, YES.

20 Q. NOW, HOW DID YOU FIRST LEARN THAT CITY STAFF WAS
21 RECOMMENDING TO THE COUNCIL THE SELECTION OF NORCAL'S
22 PROPOSAL?

23 A. HOW DID I FIRST LEARN THAT?

24 Q. YES.

25 A. I DON'T REMEMBER.

26 Q. I ASSUME GIVEN YOUR POSITION IN THE COMPANY YOU
27 WOULDN'T GO DOWN TO THE COUNTER AT CITY HALL AND PICK IT UP
28 YOURSELF, SOMEBODY PROBABLY BROUGHT IT TO YOU?

1 A. THAT'S PROBABLY TRUE.

2 Q. DO YOU KNOW WHO, WHAT, WHEN, HOW?

3 A. I CAN SPECULATE, BUT I DON'T REMEMBER.

4 Q. I DON'T WANT YOU TO SPECULATE. IF YOU DON'T
5 REMEMBER, THAT'S A FINE ANSWER.

6 WERE YOU AWARE OF THAT RECOMMENDATION BY THE CITY
7 STAFF SELECTING NORCAL BEFORE THE FIRST CITY COUNCIL VOTE ON
8 OCTOBER 10, 2000?

9 A. I'M ALMOST POSITIVE I WAS, YES. I SHOULD HAVE
10 BEEN.

11 Q. WE FOUND SOMETHING YOU'RE CLEAR ON. PRIOR TO THE
12 FIRST CITY COUNCIL'S VOTE ON NORCAL'S PROPOSAL ON OCTOBER
13 10, 2000, DID ANYONE FROM ENVIRONMENTAL SERVICE DEPARTMENT
14 STAFF SUGGEST TO NORCAL THAT CWS SHOULD USE TEAMSTERS AT ITS
15 SAN JOSE RECYCLING FACILITY?

16 A. NOT THAT I REMEMBER.

17 Q. OKAY. AND CAN WE TAKE A LOOK AT EXHIBIT 7? LET ME
18 ASK YOU TO TAKE A LOOK AT EXHIBIT 7 AND TELL US IF YOU
19 RECOGNIZE THE DOCUMENT, AND IF SO, WHAT IT IS.
20 I THINK WE HAVE ANOTHER COPY, I'LL PUT IT UP ON THE SCREEN
21 SO WE CAN ALL SEE IT.

22 A. I'M SORRY, WHAT WAS YOUR QUESTION?

23 Q. DO YOU RECOGNIZE EXHIBIT 7?

24 A. I REMEMBER IT, YES.

25 Q. AND WHAT IS EXHIBIT 7?

26 A. IT'S A LETTER TO MAYOR GONZALES CLARIFYING ISSUES
27 RELATING TO REPRESENTATION OF WORKERS AT THE CALIFORNIA

28 WASTE SOLUTIONS PLANT.

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1 Q. OKAY. NOW, LET'S LOOK AT PAGE TWO OF THE OCTOBER
2 4TH, 2000 LETTER TO MAYOR GONZALES. WHO SIGNED THAT ON YOUR
3 BEHALF, DO YOU KNOW?

4 A. THAT WAS MY ASSISTANT AT THE TIME, LILLIAN TAN.

5 Q. HOW WAS HER LAST NAME SPELLED?

6 A. T-A-N.

7 Q. WHY IS IT YOU DIDN'T SIGN THE LETTER?

8 A. I WASN'T IN THE OFFICE AS I RECALL.

9 Q. DID YOU DICTATE THE LETTER TO YOUR ASSISTANT?

10 A. NO, IT WAS WRITTEN BY SOMEONE ELSE.

11 Q. WHO?

12 A. I'M NOT SURE. I COULD AGAIN SPECULATE, BUT I'M NOT
13 SURE.

14 Q. DID YOU APPROVE THE LETTER BEFORE IT WENT OUT?

15 A. I BELIEVE I DID, YES.

16 Q. LET'S TAKE A LOOK AT THE LETTER. FIRST OF ALL, THE
17 LETTER IS DATED OCTOBER 4TH, 2000?

18 A. YES.

19 Q. IN THE OCTOBER 4TH, 2000 LETTER TO THE MAYOR, DOES
20 NORCAL TELL THE MAYOR THAT CWS EMPLOYEES IN SAN JOSE WILL BE
21 REPRESENTED BY THE LONGSHOREMEN AS PART OF THE COLLECTIVE
22 BARGAINING AGREEMENT?

23 A. THAT'S MY UNDERSTANDING OF WHAT THE FOURTH
24 PARAGRAPH SAYS.

25 Q. THAT WAS YOUR UNDERSTANDING AS OF OCTOBER 4TH,
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26 2000, WHEN THE LETTER WENT OUT?

27 A. THAT' S MY RECOLLECTI ON, YES.

28 Q. SO AS OF OCTOBER 4TH, 2000, IT WAS YOUR BELIEF THAT

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1 CWS WOULD BE USING LONGSHOREMEN FOR ITS RECYCLING FACILITY
2 IN SAN JOSE, CORRECT?

3 A. YES.

4 Q. WHY DID YOU SEND THE LETTER, WHY DID NORCAL SEND
5 THIS LETTER TO THE MAYOR?

6 A. AS I RECALL, THE TEAMSTERS REPRESENTATIVE, BOB
7 MORALES, WAS NOT HAPPY WITH THAT --

8 Q. SITUATION.

9 A. AND WAS LOBBYING AT LEAST MAYOR GONZALES, MAYBE THE
10 CITY COUNCIL, TO REQUIRE THAT TO BE CHANGED.

11 Q. AND HOW DID YOU BECOME AWARE OF THAT?

12 A. SOMEONE, I THINK BILL JONES, CONTACTED ME AND SAID,
13 MORALES IS TRYING TO PREVENT US FROM GETTING THE CONTRACT.

14 Q. BY THE WAY, I TAKE IT YOU RECOGNIZED MR. MORALES
15 THIS MORNING?

16 A. YES, I KNOW HIM WELL.

17 Q. AND IN THE LETTER DOES IT SAY THE PURPOSE OF THE
18 LETTER IS TO CLARIFY OUR POSITION WITH RESPECT TO WORKER
19 RETENTION IN SAN JOSE, OUR COMMITMENT TO RECYCLEABLES
20 PROCESSING IN THE CITY?

21 A. YES, IT SAYS THAT.

22 Q. WHY WAS IT NECESSARY TO CLARIFY NORCAL' S POSITION
23 WITH RESPECT TO WORKER RETENTION IN SAN JOSE, DO YOU KNOW?

22 CONCERN WAS BEING RAISED BY.

23 Q. WHY DID YOU THINK THAT?

24 A. THAT'S WHAT I HEARD FROM OUR PEOPLE WHO WERE
25 WORKING ON IT.

26 Q. THAT WAS REPORTED BACK TO YOU FROM OTHER PEOPLE AT
27 NORCAL?

28 A. THAT'S CORRECT.

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1 Q. WOULD THAT HAVE BEEN BILL JONES?

2 A. THAT'S MY RECOLLECTION.

3 Q. WAS HE THE PERSON WHO WAS BASICALLY SHEPHERDING
4 THIS PROPOSAL THROUGH CITY HALL ON BEHALF OF NORCAL?

5 A. I'M NOT SURE WHAT SHEPHERDING IT --

6 Q. WHO WOULD BE THE PERSON AT NORCAL WHO YOU WOULD
7 CONSIDER TO BE MOST DIRECTLY INVOLVED IN AND IN CHARGE OF
8 GETTING THIS PROPOSAL ACCEPTED BY THE CITY OF SAN JOSE?

9 A. THAT WAS AN ASSIGNMENT OF BILL JONES.

10 Q. HAD YOU RECEIVED REPORTS ABOUT NORCAL HAVING
11 DISCUSSIONS WITH MAYOR GONZALES ABOUT THIS PROPOSAL PRIOR TO
12 THIS OCTOBER 4TH, 2000 LETTER?

13 A. I DON'T RECALL.

14 Q. DID YOU PERSONALLY TALK TO MAYOR GONZALES ABOUT THE
15 NORCAL PROPOSAL PRIOR TO OCTOBER 4TH, 2000, THE DATE OF THIS
16 LETTER?

17 A. I DON'T BELIEVE SO, NO.

18 Q. OKAY. AT THE TIME THAT THIS OCTOBER 4TH, 2000
19 LETTER WENT OUT ON BEHALF OF NORCAL UNDER YOUR NAME, DID YOU

20 KNOW THAT ESD, ENVIRONMENTAL SERVICES DEPARTMENT, HAD
21 ALREADY RECOMMENDED THE SELECTION OF NORCAL?

22 A. I THINK I DID.

23 Q. REMEMBERING THAT THE LAST EXHIBIT I SHOWED YOU,
24 THAT RECOMMENDATION DATED SEPTEMBER 22ND, AND THIS IS
25 OCTOBER 4TH, IS YOUR BEST RECOLLECTION THAT YOU KNEW THAT
26 YOU HAD STAFF'S RECOMMENDATION AT THE TIME THIS LETTER WENT
27 OUT?

28 A. I'M PRETTY SURE, YES.

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1 Q. NOW, THIS EXHIBIT, DOES IT ALSO INCLUDE AN OCTOBER
2 4TH LETTER TO BOB MORALES?

3 A. YES, IT DOES.

4 Q. AND THIS WENT OUT UNDER YOUR NAME, CORRECT, LOOKING
5 AT PAGE TWO?

6 A. YES, IT DID.

7 Q. SIGNED ON YOUR BEHALF BY YOUR ASSISTANT, MISS TAN?

8 A. YES.

9 Q. AND DID YOU APPROVE OF THE SENDING OF THIS LETTER
10 TO MR. MORALES?

11 A. I BELIEVE I DID, YES.

12 Q. AND WAS THE PURPOSE OF THIS LETTER NORCAL'S ATTEMPT
13 TO ADDRESS MR. MORALES'S CONCERNS?

14 A. I BELIEVE THAT'S FAIR, YES.

15 Q. AND THE REASON NORCAL WANTED TO ADDRESS
16 MR. MORALES'S CONCERNS WAS THAT NORCAL HAD CONCERNS ABOUT
17 MR. MORALES LOBBYING THE MAYOR AND COUNCIL AGAINST YOUR

18 PROPOSAL, CORRECT?

19 A. I AGREE WITH THAT, YES.

20 Q. AND WHY DID NORCAL HAVE THOSE CONCERNS?

21 A. OUR EXPERIENCE WITH MR. MORALES IS THAT HE IS, CAN
22 BE VERY INFLUENTIAL POLITICALLY, AND WE WANTED TO MAKE SURE
23 HE DIDN'T UNDERMINE THE RECOMMENDATION OF THE STAFF TO AWARD
24 THE CONTRACT TO US.

25 Q. NOW, IN THIS LETTER TO MR. MORALES, DOES NORCAL
26 INDICATE THAT IT'S GOING TO OFFER POSITIONS TO ALL CURRENT
27 LOCAL 350 REPRESENTATIVE EMPLOYEES WHO WERE DISPLACED WHEN
28 NORCAL WAS AWARDED CONTRACTS AND DID NOT FIND POSITIONS WITH

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1 CALIFORNIA WASTE SOLUTIONS?

2 A. (NO RESPONSE.)

3 Q. LOOK AT THE FOURTH PARAGRAPH.

4 A. YES, I SEE THAT, YES.

5 Q. IS THAT WHAT THE LETTER SAYS?

6 A. YES.

7 Q. AND SO THAT WAS SOMETHING NOT REQUIRED BY THE RFP,
8 WAS IT?

9 A. NO, I DON'T BELIEVE SO.

10 Q. IN OTHER WORDS, IF NORCAL'S OPERATION USED LESS
11 EMPLOYEES, YOU DIDN'T HAVE TO HIRE PEOPLE WHO HAD NO WORK
12 UNDER NORCAL'S CONTRACT, RIGHT?

13 A. THAT'S CORRECT.

14 Q. SO THIS WAS SOMETHING EXTRA YOU WERE ADDING TO
15 SWEETEN THE DEAL FOR MR. MORALES, RIGHT?

- 16 A. WE TRIED TO SWEETEN IT FOR HIM, YES.
- 17 Q. THAT WAS A SWEETENER, THAT'S WHAT IT WAS?
- 18 A. YES.
- 19 Q. LET ME SHOW YOU EXHIBIT 11. HAVE YOU SEEN THAT
- 20 LETTER BEFORE, MR. SANGIACOMO?
- 21 A. I THINK SO.
- 22 Q. IT'S SIGNED, APPARENTLY SIGNED BY BILL JONES; IS
- 23 THAT CORRECT, ON PAGE TWO?
- 24 A. YES.
- 25 Q. AND THIS IS AN OCTOBER 5TH LETTER FROM NORCAL TO
- 26 THE MAYOR; IS THAT RIGHT?
- 27 A. YES.
- 28 Q. IN THIS LETTER ONCE AGAIN THERE'S A REFERENCE MADE

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- 1 TO LONGSHOREMEN BEING USED BY CWS FOR ITS RECYCLING
- 2 OPERATIONS; IS THAT CORRECT?
- 3 A. I HAVEN'T GOTTEN THERE YET.
- 4 Q. OKAY.
- 5 A. OH, THE NEXT TO LAST PARAGRAPH?
- 6 Q. RIGHT. DOES THE PARAGRAPH BEGIN NORCAL SELECTED
- 7 CWS AS THEIR PARTNER FOR RECYCLE PLUS AFTER CAREFUL
- 8 CONSIDERATION, THAT PARAGRAPH?
- 9 A. I SEE THAT, YES.
- 10 Q. IT GOES ON CONCERNING THE MRF WORKERS -- I'M SORRY,
- 11 WRONG PAGE. CALIFORNIA WASTE SOLUTIONS IS A PRO-LABOR
- 12 COMPANY WITH EMPLOYEES CURRENTLY COVERED BY COLLECTIVE
- 13 BARGAINING AGREEMENT WITH TEAMSTERS LOCAL 70 AND ILWU LOCAL

- 14 6.
- 15 A. YES.
- 16 Q. TEAMSTERS LOCAL 70 REFERRED TO THE DRIVERS THAT CWS
17 USED UP IN OAKLAND, RIGHT?
- 18 A. THAT' S MY UNDERSTANDING.
- 19 Q. AND ILWU LOCAL 6 WERE THE LONGSHOREMEN THAT CWS
20 USED IN OAKLAND TO DO THE SORTING AND RECYCLEABLES, RIGHT?
- 21 A. THAT' S MY UNDERSTANDING.
- 22 Q. AND SO ONCE AGAIN ON OCTOBER 5TH, NEXT DAY AFTER
23 THE OCTOBER 4TH LETTER, THERE' S A LETTER SENT BY NORCAL TO
24 THE MAYOR AGAIN REFERENCING LONGSHOREMEN AS BEING THE
25 WORKERS TO BE USED BY CWS IN SAN JOSE, CORRECT?
- 26 A. THIS LETTER, YES.
- 27 Q. YES. AND I TAKE IT ONCE AGAIN ON OCTOBER FIFTH IT
28 WAS STILL YOUR BELIEF THAT IF NORCAL WERE AWARDED THE

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- 1 CONTRACT FROM THE CITY, CWS WILL BE USING LONGSHOREMEN,
2 CORRECT?
- 3 A. THAT' S CORRECT.
- 4 Q. THAT BRINGS US TO FRIDAY, OCTOBER 6TH, 2000. DID
5 YOU HAVE A MEETING WITH MAYOR GONZALES ON THAT DAY?
- 6 A. YES, I DID. THAT DAY I REMEMBER.
- 7 Q. I THOUGHT YOU MIGHT. WAS THAT ON A FRIDAY?
- 8 A. I REMEMBER THE DATE OCTOBER 6.
- 9 Q. OKAY. LET ME SEE IF I CAN ORIENT YOU TO THE DATE.
10 ON OCTOBER 9TH, NORCAL ENTERED INTO AN ADDENDUM
11 AMENDING THE AGREEMENT WITH CWS. DO YOU RECALL THAT?

- 12 A. I RECALL THE ADDENDUM, YES.
- 13 Q. WASN' T THIS A FRIDAY/MONDAY SITUATION, MEETING WITH
- 14 THE MAYOR ON FRIDAY --
- 15 A. IT COULD BE, YES.
- 16 Q. DO YOU HAVE A CALENDAR?
- 17 A. WITH ME, NO.
- 18 Q. LET ME SEE --
- 19 A. I' M WILLING TO TAKE YOUR WORD THAT OCTOBER 6 WAS A
- 20 FRIDAY.
- 21 Q. THAT' S FINE. YOU DON' T RECALL AS YOU SIT HERE WHAT
- 22 DAY OF THE WEEK IT WAS?
- 23 A. NO, I DON' T.
- 24 Q. BUT YOU DO RECALL IT WAS OCTOBER 6, 2000?
- 25 A. YES, I DO.
- 26 Q. WHERE DID THE MEETING TAKE PLACE?
- 27 A. IT WAS DESCRIBED TO ME AS THE MAYOR' S CONFERENCE
- 28 ROOM AT CITY HALL.

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- 1 Q. THIS WAS THE OLD CITY HALL?
- 2 A. YES.
- 3 Q. AND WHO ELSE ATTENDED THE MEETING?
- 4 A. AS I RECALL, THE PEOPLE THAT ACTUALLY WENT INTO
- 5 THAT ROOM WERE MYSELF, BILL JONES, DAVID DUONG. I' M
- 6 PRESUMING YOU KNOW HIS POSITION.
- 7 Q. I' M SORRY?
- 8 A. YOU KNOW WHO HE I S.
- 9 Q. YES. HE' S THE PRESIDENT OF CWS?

10 A. THAT'S CORRECT. BOB MORALES. I BELIEVE A WOMAN,
11 THERE WAS A WOMAN I IDENTIFIED TO ME LATER AS AMY DEAN. AND
12 I'M PRETTY SURE THERE WAS AN ATTORNEY FROM THE TEAMSTERS
13 NAMED KEN ABSALOM, AND THEN THE MAYOR CAME IN, MAYOR
14 GONZALES, AND WAS ACCOMPANIED BY JOE GUERRA.

15 Q. WHO IS JOE GUERRA?

16 A. I BELIEVE HIS TITLE AT THE TIME WAS FINANCE OR
17 BUDGET DIRECTOR.

18 Q. THE MAYOR'S BUDGET DIRECTOR?

19 A. YES.

20 Q. AND DID ANYONE TAKE NOTES AT THIS MEETING?

21 A. NOT THAT I'M AWARE OF.

22 Q. WHO ARRANGED THIS MEETING?

23 A. UH -- I BELIEVE WE WERE ASKED BY MORALES TO ATTEND.

24 Q. OKAY. NOW, THE PERSONS THAT YOU RECALL IN
25 ATTENDANCE, DID THEY STAY FOR THE ENTIRE MEETING OR DID SOME
26 PEOPLE LEAVE BEFORE THE CONCLUSION OF THE MEETING?

27 A. MY RECOLLECTION IS THAT EVERYBODY LEFT ABOUT THE
28 SAME TIME WHEN THE MEETING WAS OVER.

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1 Q. OKAY. DID SOMETHING HAPPEN AT THIS MEETING THAT
2 CAUSED NORCAL TO ASK CWS TO SWITCH FROM LONGSHOREMEN TO
3 TEAMSTERS AT ITS SAN JOSE RECYCLING FACILITY?

4 A. YES.

5 Q. WHAT HAPPENED?

6 A. I DON'T REMEMBER SPECIFIC WORDS AND WHO SAID WHAT
7 TO WHOM, BUT THE GIST OF THE MEETING WAS COMMENTS BY THE

8 MAYOR THAT THEY WOULD REALLY LIKE TO SEE THE CWS FACILITY BE
9 A TEAMSTERS FACILITY. AND WE WERE ASKED IF WE WOULD MAKE
10 THAT HAPPEN.

11 I REMEMBER RESPONDING THAT I DIDN'T HAVE A PROBLEM
12 WITH THAT IF CWS DIDN'T HAVE A PROBLEM, BECAUSE IT WAS THEIR
13 PLANT AND WE DON'T HAVE THE ABILITY TO TELL THEM HOW TO RUN
14 THEIR FACILITY.

15 CWS, DAVID DUONG MADE THE COMMENT THAT HE WOULD DO
16 IT, BUT THERE WAS AN EXPECTATION THERE WOULD BE A
17 SUBSTANTIAL INCREASE IN HIS COSTS OF OPERATING THE PLANT IF
18 HE WAS A TEAMSTERS SHOP, AND HE WOULD NEED TO BE MADE WHOLE
19 FROM NORCAL, BE MADE WHOLE. I SAID TO THE MAYOR THAT WE
20 ONLY AGREED TO DO IT IF WE WERE MADE WHOLE.

21 Q. WHAT DID THE MAYOR SAY, IF ANYTHING?

22 A. WELL, THERE WAS A GENERAL DISCUSSION HOW MUCH MIGHT
23 THAT BE, AND WE HAD A ROUGH ESTIMATE BASED ON WHAT WE KNEW
24 OF THE CURRENT ILWU WAGES AND BENEFIT PACKAGE AND THEIR
25 UNION AGREEMENT PACKAGE WE'RE HEARING THAT THE TEAMSTERS HAD
26 IN THEIR CURRENT AGREEMENT. WE ESTIMATED IT WOULD BE
27 SOMEWHERE IN THE AREA OF TWO MILLION DOLLARS PER YEAR
28 ADDITIONAL COST. AND THE MAYOR SAID SOMETHING ALONG THE

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1 LINE OF, YOU DO IT, WE'LL MAKE YOU WHOLE.

2 Q. IS THAT THE GIST OF WHAT WAS SAID?

3 A. I HAVE A LITTLE TO ADD, AND THAT WAS SOMETHING
4 ALONG THE LINES -- I BELIEVE I ASKED HIM IF WE COULD AMEND
5 THE AGREEMENT BEFORE IT WAS SIGNED, BEFORE IT GOT FINAL

6 APPROVAL IN THE NEXT COUPLE OF DAYS. AND HIS FEELING WAS
7 THAT WE COULDN'T DO THAT UNTIL WE ACTUALLY HAD AGREEMENTS IN
8 PLACE, A NEW UNION AGREEMENT IN PLACE AND KNEW WHAT THE
9 NUMBERS WERE GOING TO BE.

10 Q. DID MAYOR GONZALES TELL YOU AT THIS MEETING THAT HE
11 WOULD SEE THAT NORCAL WAS AWARDED THE COLLECTION CONTRACT IF
12 CWS WOULD SIGN WITH THE TEAMSTERS?

13 A. I DO NOT REMEMBER HIM SAYING THAT.

14 Q. SO WHEN YOU SAY YOU DO NOT REMEMBER, ARE YOU SAYING
15 IT DIDN'T HAPPEN OR YOU CAN'T RECALL WHETHER IT HAPPENED OR
16 NOT?

17 A. I DO NOT REMEMBER IT HAPPENING.

18 Q. OKAY. DID MAYOR GONZALES PROMISE AT THIS MEETING
19 THAT THE CITY WOULD REIMBURSE CWS FOR ANY DIFFERENCE IN
20 WAGES BETWEEN ITS ILWU CONTRACT AND THE WAGES PAID TO
21 TEAMSTERS?

22 A. HIS STATEMENT WAS SOMETHING ALONG THE LINE OF HE
23 WOULD DO HIS BEST TO MAKE SURE THAT NORCAL WAS REIMBURSED
24 THE ADDITIONAL COST.

25 Q. DID YOU FEEL THAT YOU WERE BEING PRESSURED BY THE
26 CITY TO GET CWS TO SIGN WITH THE TEAMSTERS?

27 A. YES.

28 Q. AND WHY DID YOU FEEL THAT WAY?

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1 A. I THOUGHT IT WAS A LITTLE UNUSUAL TO BE CALLED TO A
2 MAYOR'S OFFICE AND HAVE A DISCUSSION OF WHAT UNION WAS GOING
3 TO REPRESENT WORKERS. I HAVE NEVER HAD THAT EXPERIENCE

4 BEFORE.

5 Q. WELL, WHO IN THE CITY DID YOU FEEL WAS PRESSURING
6 YOU TO GET CWS TO SIGN WITH THE TEAMSTERS?

7 A. THE MAYOR, MAYOR GONZALES.

8 Q. WAS THERE ANYTHING THAT THE MAYOR SAID THAT CAUSED
9 YOU TO FEEL THAT YOU WERE BEING PRESSURED BY THE MAYOR TO
10 GET CWS TO SIGN WITH THE TEAMSTERS?

11 A. WELL, HE ASKED THAT WE DO.

12 Q. HE MADE --

13 A. TYPICALLY WHEN A MAYOR ASKS YOU TO DO SOMETHING,
14 IT'S BEEN MY EXPERIENCE THEY ASK BECAUSE THEY REALLY WANT
15 YOU TO DO IT.

16 Q. OKAY. SO THE MAYOR DIRECTLY ASKED YOU TO GET CWS
17 TO SIGN WITH THE TEAMSTERS; IS THAT CORRECT?

18 A. THAT'S MY RECOLLECTION, YES.

19 Q. DID YOU FEEL THE MAYOR HAD THE RIGHT TO ASK YOU TO
20 GET CWS TO SIGN WITH THE TEAMSTERS?

21 A. I DON'T KNOW IF HE HAS THAT RIGHT OR NOT. ALL I
22 REMEMBER IS HE DID.

23 Q. GETTING CWS TO SIGN WITH THE TEAMSTERS WAS NOT A
24 REQUIREMENT OF THE OFFICIAL RFP THAT THE CITY RELEASED, WAS
25 IT?

26 A. I DON'T RECALL ANY REQUIREMENT OF ANY UNION
27 REPRESENTING MRF WORKERS.

28 Q. DID YOU FEEL YOU HAD THE RIGHT TO ASK CWS TO SIGN

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1 WITH THE TEAMSTERS?

2 A. NO.

3 Q. WAS DAVID DUONG IN THE ROOM WHEN THIS DISCUSSION
4 WITH THE MAYOR REQUESTING THAT CWS SIGN WITH THE TEAMSTERS
5 WAS MADE, HAPPENED?

6 A. MY RECOLLECTION IS, YES, HE WAS SITTING RIGHT
7 ACROSS FROM ME.

8 Q. DID THE MAYOR EXPLAIN WHY HE WANTED NORCAL TO GET
9 CWS TO SIGN WITH THE TEAMSTERS?

10 A. I THINK HE USED THE WORDS TO MAINTAIN LABOR PEACE,
11 SOMETHING LIKE THAT.

12 Q. LET ME ASK YOU THIS: YOU TOLD US NOW THAT THE
13 MAYOR MADE A REQUEST THAT CWS SIGN WITH THE TEAMSTERS,
14 CORRECT?

15 A. YES.

16 Q. WAS THAT REQUEST DIRECTED TO NORCAL OR WAS IT
17 DIRECTED TO CWS BY THE MAYOR?

18 A. MY RECOLLECTION IS IT WAS MADE OF NORCAL.

19 Q. NOW, DOES NORCAL, DID NORCAL OWN ANY INTEREST IN
20 CWS AT THAT TIME?

21 A. NO, WE DID NOT.

22 Q. DID CWS AT THAT TIME OWN ANY INTEREST IN NORCAL?

23 A. NO. THE REASON I'M HESITATING, AT ONE POINT WE DID
24 OWN A PRIOR BUSINESS THAT DAVID DUONG HAD. AND HE AND SOME
25 MEMBERS OF HIS FAMILY WERE EMPLOYEES OF NORCAL FOR A PERIOD
26 OF TIME.

27 Q. YEAH, BUT --

28 A. THEY MAY HAVE AN ESOP OWNERSHIP BUT I'M NOT AWARE

1 OF IT.

2 Q. THE POINT I'M GETTING AT, THE TIME ON OCTOBER 6,
3 2000, WHEN YOU'RE IN THE MAYOR'S CONFERENCE ROOM AND
4 SPEAKING WITH THE MAYOR, WAS NORCAL OR WERE NORCAL AND CWS
5 COMPLETELY SEPARATE COMPANIES?

6 A. YES, THEY WERE.

7 Q. DID YOU ASK THE MAYOR, WHY ARE YOU ASKING NORCAL TO
8 GET CWS TO SIGN, WHY DON'T YOU TALK TO CWS ABOUT THAT?

9 A. WELL, I THINK HE WAS ASKING US BECAUSE WE WERE THE
10 CONTRACTOR AND CWS WAS A SUBCONTRACTOR TO US.

11 Q. YOU DIDN'T FEEL YOU HAD THE RIGHT TO ASK YOUR
12 PRINCIPAL OWNED SUBCONTRACTOR TO GO WITH ONE UNION OVER
13 ANOTHER, CORRECT?

14 A. THAT'S CORRECT.

15 Q. DID IT HAVE ANYTHING TO DO WITH THE TIME THIS
16 CONVERSATION IS TAKING PLACE THE COUNCIL HAD NOT YET VOTED
17 ON THE SELECTION OF NEW RECYCLING PLUS SERVICE CONTRACTORS,
18 IN YOUR MIND?

19 A. I DON'T RECALL THAT BEING IN MY MIND AT THE TIME.

20 Q. DID IT STRIKE YOU AS ODD THAT THE MAYOR WAS TALKING
21 TO NORCAL ABOUT WHICH UNION ANOTHER COMPANY IS GOING TO SIGN
22 WITH?

23 A. I FELT IT WAS A POLITICALLY -- POLITICAL, APPLYING
24 POLITICAL PRESSURE TO GET US TO DO SOMETHING HE SEEMED TO
25 WANT.

26 Q. AND DID YOU ALSO FEEL THAT LABOR WAS PRESSURING
27 NORCAL TO GET CWS TO SIGN WITH THE TEAMSTERS?

28 A. YES, I DEFINITELY HAD THAT FEELING.

1 Q. WHO FROM LABOR WAS PRESSURING NORCAL?

2 A. WELL, THE ONE I WAS MOST AWARE OF WAS BOB MORALES.
3 THERE PROBABLY WERE OTHERS.

4 Q. WHAT ABOUT AMY DEAN? YOU MENTIONED SHE WAS AT THE
5 MEETING. HAD SHE BEEN TALKING TO NORCAL ABOUT GETTING CWS
6 TO SIGN WITH THE TEAMSTERS AT THAT POINT?

7 A. SHE HAD NOT SPOKEN TO ME, BUT I BELIEVE SHE SPOKE
8 TO BILL JONES.

9 MR. FINKELSTEIN: MR. FOREMAN, I WILL ASK TO HAVE
10 MARKED AS EXHIBIT 72 A MEMO FROM TODD THOMPSON TO MIKE BAKER
11 DATED NOVEMBER 20, 2003. IT CONSISTS OF SOME 13 PAGES.

12 THE FOREMAN: SO MARKED.

13 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
14 JURY EXHIBIT 72.)
15 BY MR. FINKELSTEIN:

16 Q. NOW, YOU TOLD US THAT TODD THOMPSON WAS AN ATTORNEY
17 THAT NORCAL USED POSSIBLY TO REVIEW ASPECTS OF THE PROPOSAL
18 SUBMITTED TO THE CITY OF SAN JOSE OR THE AGREEMENT; IS THAT
19 CORRECT?

20 A. YES.

21 Q. AND DO YOU RECALL THAT IN THE YEAR 2003, IN THE
22 FALL OF 2003, NORCAL WAS GETTING READY TO PARTICIPATE IN AN
23 ARBITRATION DISPUTE WITH CWS OVER TOO MUCH GARBAGE IN THE
24 RECYCLEABLES AND SOME OTHER ISSUES AS WELL?

25 A. I REMEMBER THE ISSUES, THE ARBITRATION. I'M A
26 LITTLE FUZZY ON DATES.

27 Q. DO YOU REMEMBER SPEAKING WITH TODD THOMPSON TO FILL
28 HIM IN ON THE BACKGROUND OF THE DEAL SO HE COULD GET

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1 PREPARED, HE AND MIKE BAKER COULD GET PREPARED FOR THE
2 ARBITRATION?

3 A. I SPOKE TO MR. THOMPSON MANY TIMES.

4 Q. OKAY. LET ME SHOW YOU WHAT'S NOW BEEN MARKED AS
5 EXHIBIT 72. IT PURPORTS TO BE A MEMO PREPARED BY
6 MR. THOMPSON ON NOVEMBER 20, 2003.

7 I WOULD LIKE YOU TO READ TO YOURSELF, IF YOU
8 WOULD, THE FIRST FULL PARAGRAPH ON PAGE THREE OF THE MEMO
9 WHICH BEGINS, ACCORDING TO MIKE. READ TO IT TO YOURSELF.
10 IT PURPORTS TO BE A MEMO RECORDING SOME INFORMATION THAT YOU
11 IMPARTED TO MR. THOMPSON ON THAT DATE, AND I'LL HAVE SOME
12 QUESTIONS ABOUT IT IN A MINUTE.

13 A. OKAY.

14 Q. LOOKING AT THAT MEMO, DOES THAT CAUSE YOU NOW TO
15 CHANGE YOUR RECOLLECTION OF WHAT THE MAYOR SAID ABOUT
16 GETTING CWS TO SIGN WITH THE TEAMSTERS?

17 A. I MAY HAVE HAD A DIFFERENT RECOLLECTION BACK THEN
18 THAN TODAY.

19 Q. DO YOU DENY MAKING THAT STATEMENT TO TODD THOMPSON?

20 A. DO I DENY IT? NO, I DON'T.

21 Q. OKAY. I REALIZE WE'RE GETTING INTO THE NOON HOUR,
22 BUT I WOULD LIKE TO CONTINUE FOR FIVE MORE MINUTES IF THAT'S
23 OKAY WITH THE REPORTER.

24 WOULD IT BE FAIR TO SAY YOUR RECOLLECTION OF THE
25 OCTOBER 6, 2000 CONVERSATION WITH THE MAYOR WOULD HAVE BEEN
26 FRESHER IN 2003 THAN THIS DATE?

27 A. IT'S PROBABLY TRUE.
28 Q. IN 2003 WHEN YOU SPOKE WITH TODD THOMPSON ABOUT

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1 YOUR MEETING WITH THE MAYOR, WAS THAT MEETING THE SUBJECT OF
2 ANY GRAND JURY REPORT OR INVESTIGATION?

3 A. IN 2003?

4 Q. YES.

5 A. NOT THAT I KNOW OF.

6 Q. AND IN 2003, WHEN YOU SPOKE WITH TODD THOMPSON,
7 YOUR ATTORNEY, ABOUT YOUR MEETING WITH THE MAYOR, WAS THAT
8 MEETING THE SUBJECT OF ANY PUBLIC CONTROVERSY?

9 A. I DON'T RECALL.

10 Q. IN OTHER WORDS, YOU SEEM -- AS A MATTER OF FACT,
11 YOU WROTE AN OP-ED PIECE WITH THE MERCURY NEWS?

12 A. WE SUBMITTED ONE, YES.

13 Q. UNDER YOUR NAME?

14 A. YES.

15 Q. IN 2003 WHEN YOU SPOKE TO TODD THOMPSON TO FILL HIM
16 IN ON THE BACKGROUND OF THE NORCAL DEAL AND THE CITY, THERE
17 WAS NO PUBLIC CONTROVERSY SURROUNDING THAT DEAL AT THAT
18 TIME, WAS THERE?

19 A. NOT THAT I RECALL.

20 Q. AND WAS WHAT YOU TOLD TODD THOMPSON ABOUT YOUR
21 RECOLLECTIONS OF THE MEETING WITH THE MAYOR, WAS THAT THE
22 TRUTH?

23 A. AS BEST AS I CAN RECALL.

24 Q. OKAY. AND HAVING LOOKED AT THAT PARAGRAPH WHICH

25 PURPORTS TO CONTAIN YOUR RECOLLECTION AT THAT TIME, HAS IT
26 REFRESHED OR CHANGED YOUR RECOLLECTION TODAY FROM WHAT YOU
27 JUST TOLD US EARLIER TODAY?

28 A. NOT YET.

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1 Q. NOT YET?

2 A. NO.

3 Q. AND WHY DON'T YOU READ OUT LOUD WHAT MR. THOMPSON
4 HAS INDICATED IN THAT MEMO AS YOUR RECOLLECTION OF THE
5 OCTOBER 6TH, 2000 MEETING.

6 A. THE PARAGRAPH YOU JUST REFERRED TO?

7 Q. YES.

8 A. "ACCORDING TO MIKE, AT SOME POINT HE, BILL JONES
9 AND DAVID DUONG ATTENDED A MEETING WITH THE MAYOR. "

10 Q. WHEN HE SAYS "HE," THAT WOULD BE YOU?

11 A. THAT WOULD BE ME, YES.

12 "AT THAT TIME THE MAYOR SAID HE WOULD SEE
13 THAT NORCAL WAS AWARDED THE COLLECTION CONTRACT IF
14 CWS WOULD SIGN WITH THE TEAMSTERS. THE MAYOR ALSO
15 PROMISED THAT THE CITY WOULD REIMBURSE CWS FOR THE
16 DIFFERENCE IN WAGES AND BENEFITS BETWEEN THE ILWU
17 CONTRACT AND WAGES PAID TO TEAMSTERS. THESE
18 PROMISES ARE NOWHERE REFLECTED IN --"

19 Q. THAT'S FINE. IT GOES ON. YOU COMPLETED WHAT WAS
20 SAID ABOUT THE OCTOBER 6 MEETING, CORRECT?

21 A. YES.

22 Q. AND HAVING LOOKED AT THAT NOW AND READ IT OUT LOUD,

23 CAN YOU TELL US BASED ON YOUR RECOLLECTI ON TODAY IN 2006
24 WHETHER THAT' S WHAT HAPPENED?

25 A. IT' S JUST, I' M SORRY, IT' S FOGGY TODAY. I DON' T
26 REMEMBER.

27 Q. DO YOU HAVE ANY REASON TO BELIEVE THAT WHEN YOU
28 TALKED TO TODD THOMPSON IN 2003 YOU WEREN' T TELLING HIM YOUR

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1 ABSOLUTE BEST MOST ACCURATE RECOLLECTI ON OF WHAT HAPPENED ON
2 OCTOBER 6 OF 2000?

3 A. NO REASON TO BELIEVE THAT --

4 Q. DID YOU HAVE ANY REASON TO COLOR OR WITHHOLD FROM
5 TODD THOMPSON WHAT HAPPENED WITH THE MAYOR?

6 A. NO.

7 Q. YOU WERE TALKING TO YOUR LAWYER, RIGHT?

8 A. THAT' S CORRECT.

9 Q. AND YOU FELT THAT YOU COULD TELL HIM THE TRUTH AND
10 NOT HOLD BACK ANYTHING?

11 A. I WOULD HOPE SO, YES.

12 Q. DO YOU BELIEVE THAT' S WHAT YOU DID?

13 A. I BELIEVE I DID.

14 MR. FINKELSTEIN: WHY DON' T WE TAKE OUR LUNCHEON
15 RECESS.

16 THE FOREMAN: LET' S RECESS UNTIL 1: 30.

17 MR. SANGI ACOMO, I WILL REMIND YOU OF THE
18 ADMONI TI ON FOR CONFIDENTIALITY. THAT' S AN ENDURING
19 ADMONI TI ON.

20 THE WITNESS: OKAY.

21 MR. FINKELSTEIN: THANK YOU VERY MUCH. WE' LL SEE
22 YOU AT 1: 30.

23 (THE LUNCHEON RECESS WAS TAKEN.)

24

25

26

27

28

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1 SAN JOSE, CALI FORNIA

MARCH 2, 2006

2

3

AFTERNOON SESSI ON:

4

THE FOREMAN: LET ME CALL THE SESSI ON TO ORDER AND
5 REVERI FY THAT ALL THE JURORS ARE PRESENT.

6

ALL THE JURORS ARE PRESENT.

7

MR. FINKELSTEIN: ALL RI GHT.

8

EXAMI NATION, CONTI NUED

9

BY MR. FINKELSTEIN:

10 Q. GOOD AFTERNOON, MR. SANGI ACOMO. I ' LL JUST REMI ND
11 YOU, HAVING BEEN PREVIOUSLY SWORN I N THI S I NVESTIGATI ON,
12 YOU' RE STI LL UNDER OATH. DO YOU UNDERSTAND THAT?

13

A. I DO.

14

Q. MR. SANGI ACOMO, WHEN WE BROKE FOR LUNCH, WE HAD
15 BEEN TALKING ABOUT YOUR MEETING WITH THE MAYOR ON OCTOBER 6,
16 2000. DO YOU RECALL THAT?

17

A. I DO.

18

Q. WHEN YOU LEFT THE MAYOR' S OFFICE, DID YOU FEEL THAT

19 YOU HAD ANY KIND OF FIRM DEAL OR UNDERSTANDING WITH THE
20 MAYOR OR THE CITY OF SAN JOSE?

21 A. I DON'T BELIEVE SO.

22 Q. AND I'M DRAWING A DISTINCTION BETWEEN SOMETHING
23 THAT MIGHT BE A FIRM DEAL BUT DIFFICULT TO ENFORCE BECAUSE
24 THERE WAS NOTHING IN WRITING TO REFLECT THE UNDERSTANDING
25 VERSUS SOMETHING THAT JUST, IT WASN'T A FIRM DEAL BUT IT WAS
26 A HAND SHAKE DEAL SO TO SPEAK. WAS IT YOUR STATE OF MIND
27 WHEN YOU LEFT ON OCTOBER 6, 2000 THAT YOU HAD NO FIRM
28 UNDERSTANDING WITH THE MAYOR ABOUT THESE MATTERS?

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1 A. WE HAD AN UNDERSTANDING. WE KNEW THAT WHAT WE GOT
2 FROM HIM, AT LEAST WHAT I THOUGHT WE GOT FROM HIM, WAS A
3 COMMITMENT TO TRY AND GET US THE ADDITIONAL FUNDING, BUT I
4 KNEW THERE WAS POLITICAL RISK INVOLVED.

5 Q. SO YOU DIDN'T BELIEVE YOU HAD ANY ASSURANCES AT
6 THAT TIME THAT IF CWS AGREED TO SIGN WITH THE TEAMSTERS,
7 EITHER CWS OR NORCAL WOULD BE MADE WHOLE. IS THAT WHAT
8 YOU'RE SAYING?

9 A. I WAS GIVEN ASSURANCES BY THE MAYOR, BUT I DON'T
10 THINK I CONSIDERED THEM BANKABLE.

11 Q. YOU DIDN'T CONSIDER THEM --

12 A. BANKABLE.

13 Q. FAIR ENOUGH. AND THOSE ASSURANCES WERE WHAT
14 EXACTLY?

15 A. I'M SORRY?

16 Q. THE ASSURANCES YOU WERE GIVEN BY THE MAYOR WERE

17 WHAT AGAIN?

18 A. SOMETHING ALONG THE LINE HE WOULD PUT IN HIS BEST
19 EFFORTS TO TRY AND GET US THE ADDITIONAL MONEY.

20 Q. DID YOU FEEL THAT IF YOU DID NOT ASK CWS TO SIGN
21 WITH THE TEAMSTERS THAT NORCAL'S CHANCES TO GET A CONTRACT
22 FROM THE CITY WOULD BE DIMINISHED SOMEHOW?

23 A. I THINK WE FELT THERE WAS A RISK WE WOULD NOT GET
24 IT.

25 Q. WHY IS THAT?

26 A. BUT AT THE SAME TIME I THINK WE JUST WEREN'T SURE,
27 BECAUSE WE ARE STILL THE LOW BIDDER. AND IF -- WILL THE
28 COUNCIL REALLY TURN US DOWN BECAUSE WE'RE LOW BIDDER IF WE

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1 DON'T DO THIS. WE JUST DIDN'T KNOW.

2 MR. FINKELSTEIN: WHY DON'T WE MARK AS EXHIBIT 73
3 AN OP-ED PIECE FROM THE MERCURY NEWS FROM AUGUST 7, 2005.

4 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
5 JURY EXHIBIT 73.)

6 THE FOREMAN: SO MARKED.

7 BY MR. FINKELSTEIN:

8 Q. LET ME SHOW YOU EXHIBIT 73. I'LL GET IT UP ON THE
9 BOARD HERE. ARE YOU FAMILIAR WITH THIS OP-ED PIECE?

10 A. YES.

11 Q. IT WENT OUT UNDER YOUR NAME, I TAKE IT?

12 A. YES.

13 Q. DID YOU ACTUALLY WRITE IT OR WAS IT WRITTEN FOR
14 YOU?

15 A. I PARTICIPATED IN ITS WRITING, BUT THE BULK WAS
16 DRAFTED BY OTHERS.

17 Q. WHO?

18 A. MOSTLY, IF I REMEMBER CORRECTLY, A FELLOW NAMED
19 ROBERT REED, WHO WAS OUR DIRECTOR OF CORPORATE
20 COMMUNICATION.

21 Q. IS HE STILL EMPLOYED BY NORCAL?

22 A. YES.

23 Q. WHERE IS HIS OFFICE?

24 A. SAME AS MINE, IN SAN FRANCISCO. AND I BELIEVE WE
25 ASKED OUR ATTORNEYS TO REVIEW IT.

26 Q. LET ME DIRECT YOUR ATTENTION TO ONE OF THE BULLETED
27 ITEMS IN THE OP-ED PIECE AND SEE IF I CAN MAKE IT MORE
28 READABLE.

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1 A. I CAN SEE IT NOW.

2 Q. ONE OF THE BULLETED ITEMS IN THIS PIECE REFERS TO
3 THE OCTOBER 6 MEETING; IS THAT CORRECT?

4 A. I'M SORRY?

5 Q. ONE OF THE BULLETED ITEMS IN THE OP-ED PIECE FROM
6 THE MERCURY NEWS REFERS TO THE OCTOBER 6, 2000 MEETING,
7 CORRECT?

8 A. YES, IT DOES.

9 Q. BY THE WAY, DO YOU RECALL THIS RUNNING IN THE PAPER
10 ON OR ABOUT AUGUST 7TH, 2005?

11 A. I REMEMBER IT RUNNING IN THE PAPER.

12 Q. DO YOU REMEMBER IT RUNNING IN THE SUMMER OF 2005?

13 A. I WOULD PROBABLY AGREE TO 2005.

14 Q. ACCORDING TO THIS OP-ED PIECE, AT A MEETING WITH
15 NORCAL, CWS AND THE TEAMSTERS ON OCTOBER 6, 2000, THE MAYOR
16 ASKED WHETHER CWS WOULD WORK WITH THE TEAMSTERS INSTEAD.
17 WHEN TOLD THAT A TEAMSTERS CONTRACT WOULD INCREASE COSTS FOR
18 CWS, THE MAYOR SAID HE WOULD SUPPORT EXTRA CITY PAYMENTS IF
19 AND WHEN EXTRA COSTS WERE DETERMINED. DO YOU SEE THAT
20 STATEMENT?

21 A. YES.

22 Q. ARE YOU THE SOURCE OF INFORMATION FOR THAT
23 STATEMENT?

24 A. I SHOULD BE AND I BELIEVE I AM.

25 Q. AND DO YOU BELIEVE THAT STATEMENT IS AN ACCURATE
26 STATEMENT OF WHAT HAPPENED AT THE MEETING OF OCTOBER 6,
27 2000?

28 A. I BELIEVE IT'S ACCURATE.

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1 Q. DOES IT LEAVE ANYTHING OUT?

2 A. NOT THAT I REMEMBER.

3 Q. WELL, IS THERE ANYTHING IN THAT OP-ED PIECE FROM
4 2005 THAT TALKS ABOUT THE MAYOR SAYING HE REALLY WANTED YOU
5 TO GO WITH THE TEAMSTERS?

6 A. I THINK THAT THE GIST OF THAT IS IN THERE, AND HE
7 ASKED US TO DO IT.

8 Q. RECOGNIZING THAT THIS IS AN OP-ED PIECE, IS THERE
9 ANYTHING IN LOOKING AT IT TODAY THAT YOU THINK IS LEFT OUT
10 OF SIGNIFICANCE OF WHAT HAPPENED ON THAT MEETING OF OCTOBER

11 6?

12 A. JUST IN THAT ONE PARAGRAPH?

13 Q. I BELIEVE THAT'S THE ONLY PLACE THE MEETING IS
14 DISCUSSED.

15 A. NOTHING OCCURS TO ME.

16 Q. OKAY. THAT'S BASED ON YOUR RECOLLECTION TODAY, IS
17 THAT CORRECT?

18 A. YES.

19 Q. HOW WOULD YOU CHARACTERIZE YOUR RECOLLECTION TODAY
20 OF THE EVENTS OF OCTOBER 6, 2000?

21 A. IN WHAT TERMS?

22 Q. WELL, WOULD YOU SAY YOU HAD A GOOD RECOLLECTION OF
23 WHAT HAPPENED ON OCTOBER 6, 2000 AS YOU SIT HERE TODAY?

24 A. I HAVE A RECOLLECTION OF THE EVENT HAPPENING --

25 Q. AS FAR AS THE DETAILS AND WHAT WAS SAID, WOULD YOU
26 SAY YOU HAD A GOOD RECOLLECTION OF THAT?

27 A. I THINK I DO.

28 Q. WOULD YOU SAY YOU HAD A CLEAR RECOLLECTION OF WHAT

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1 WAS SAID?

2 A. I JUST DON'T KNOW, DON'T UNDERSTAND WHAT THAT --

3 Q. I'M TRYING TO GET -- THIS MORNING WE DISCUSSED
4 OTHER RECOLLECTIONS THAT YOU HAD ABOUT THE OCTOBER 6, 2000
5 MEETING. I'M TRYING TO GET A SENSE FROM YOU AS HOW YOUR
6 RECOLLECTION TODAY COMPARES WITH YOUR PRIOR RECOLLECTION OF
7 OCTOBER 6, 2000.

8 A. I REMEMBER TODAY WHAT I REMEMBER, BUT I DON'T

- 9 REMEMBER WHAT I HAVE FORGOTTEN.
- 10 Q. ALL RIGHT. FAIR ENOUGH. WHY DON'T WE MOVE ON TO
11 ANOTHER TOPIC.
- 12 PRIOR TO THE FIRST CITY COUNCIL VOTE ON OCTOBER
13 10, 2000, DID YOU TELL ANYONE ELSE ABOUT WHAT THE MAYOR SAID
14 CONCERNING CWS AND THE TEAMSTERS?
- 15 A. I PROBABLY TOLD ARCHIE HUMPHREY.
- 16 Q. AND WHEN DID THAT CONVERSATION TAKE PLACE?
- 17 A. EITHER IN THE LOBBY OUTSIDE THE MAYOR'S OFFICE
18 WHERE HE WAS WAITING OR ON THE RIDE BACK TO SAN FRANCISCO.
- 19 Q. SO THAT WOULD HAVE BEEN VIRTUALLY CONTEMPORANEOUS
20 WITH THE MEETING?
- 21 A. ALMOST IMMEDIATELY THEREAFTER.
- 22 Q. OKAY. AND DID MR. HUMPHREY TAKE ANY NOTES OF WHAT
23 YOU WERE TELLING HIM?
- 24 A. I DON'T BELIEVE SO.
- 25 Q. DID YOU JOT DOWN ANY NOTES OF WHAT HAD BEEN SAID IN
26 YOUR MEETING WITH THE MAYOR?
- 27 A. I DON'T BELIEVE I DID.
- 28 Q. DID YOU SEND ANY E-MAILS TO ANYONE SUMMARIZING WHAT

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- 1 WAS SAID WITH THE MAYOR?
- 2 A. NOT THAT I REMEMBER.
- 3 Q. DID YOU TELL ANYONE ELSE BESIDES ARCHIE HUMPHREY
4 ABOUT WHAT HAD GONE ON IN THE MEETING WITH THE MAYOR PRIOR
5 TO THE FIRST CITY COUNCIL VOTE OF OCTOBER 10?
- 6 A. NOT THAT I REMEMBER.

7 Q. PRIOR TO THE FIRST CITY COUNSEL VOTE ON OCTOBER 10,
8 2000, DID ANY OTHER SAN JOSE CITY OFFICIALS, EITHER ELECTED
9 OR APPOINTED OR STAFF, ASK NORCAL TO GET CWS TO SIGN WITH
10 THE TEAMSTERS?

11 A. NOT THAT I RECALL.

12 Q. PRIOR TO THE FIRST CITY COUNCIL VOTE ON OCTOBER 10,
13 2000, DID ANY OTHER SAN JOSE CITY OFFICIAL SUGGEST THAT
14 NORCAL'S CHANCES OF GETTING A CONTRACT WITH THE CITY WOULD
15 BE IMPROVED IF CWS SIGNED WITH THE TEAMSTERS?

16 A. NOT THAT I RECALL.

17 Q. PRIOR TO THE FIRST CITY COUNCIL VOTE ON OCTOBER 10,
18 2000, DID ANY OTHER CITY OFFICIALS SUGGEST THAT THE CITY
19 WOULD PAY THE ADDITIONAL COST OF HAVING CWS SIGN WITH THE
20 TEAMSTERS?

21 A. I DON'T EVEN REMEMBER HAVING ANY CONVERSATION WITH
22 ANYONE ELSE. I DON'T REMEMBER.

23 Q. NOW, FOLLOWING YOUR CONVERSATION WITH THE MAYOR ON
24 OCTOBER 6, 2000, DID YOU ASK DAVID DUONG IF HE WAS AGREEABLE
25 TO USING THE TEAMSTERS?

26 A. WOULD YOU ASK THE QUESTION AGAIN?

27 Q. AFTER YOUR OCTOBER 6, 2000 CONVERSATION WITH THE
28 MAYOR, DID YOU ASK DAVID DUONG IF HE WAS AGREEABLE TO USING

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1 THE TEAMSTERS?

2 A. I BELIEVE I DID.

3 Q. AND WHEN AND WHERE DID THAT TAKE PLACE?

4 A. I DON'T KNOW. I DON'T REMEMBER.

- 5 Q. IT WAS FACE TO FACE OR BY PHONE?
- 6 A. I DON' T KNOW.
- 7 Q. WHEN DID IT TAKE PLACE?
- 8 A. I DON' T REMEMBER.
- 9 Q. DID ANYONE ELSE WITNESS THIS CONVERSATION WITH
- 10 DAVID DUONG WHEN YOU ASKED HIM IF HE WAS AGREEABLE TO USING
- 11 THE TEAMSTERS?
- 12 A. I DON' T REMEMBER.
- 13 Q. DID YOU FEEL THAT YOU HAD THE RIGHT TO ASK DAVID
- 14 DUONG TO SIGN WITH THE TEAMSTERS?
- 15 A. WE DID NOT HAVE A LEGAL RIGHT TO ASK HIM TO DO
- 16 THAT.
- 17 Q. WHY DID YOU ASK DAVID DUONG TO USE THE TEAMSTERS IF
- 18 YOU DIDN' T FEEL YOU HAD A LEGAL RIGHT TO ASK HIM THAT?
- 19 A. I SUPPOSE TO COMPLY.
- 20 Q. I' M SORRY, COULD YOU MOVE THE MICROPHONE A LITTLE
- 21 CLOSER? I' M HAVING A HARD TIME HEARING YOU.
- 22 A. I' LL TRY.
- 23 Q. DO YOU WANT ME TO REPEAT THE QUESTION?
- 24 A. PLEASE.
- 25 Q. WHY DID YOU ASK DAVID DUONG TO USE THE TEAMSTERS IF
- 26 YOU DIDN' T FEEL THAT YOU HAD THE LEGAL RIGHT TO ASK HIM
- 27 THAT?
- 28 A. AS I REMEMBER, JUST TO SEE IF HE WOULD COMPLY WITH

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1 THE MAYORS' S REQUEST.

2 Q. AND WHY DID YOU WANT TO DO THAT?

3 A. TO GET PAST THIS ISSUE OF LABOR PEACE AND SEE IF WE
4 COULD HAVE ONE LESS ISSUE BETWEEN US AND GETTING THE
5 CONTRACT.

6 Q. ARE YOU SUGGESTING THAT YOU FELT THAT THE CONTRACT
7 WAS SOMEHOW IN JEOPARDY IF YOU DIDN'T DO THIS?

8 A. I THINK IT COULD HAVE BEEN.

9 Q. WHAT REASON DID YOU GIVE TO DAVID DUONG FOR WHY CWS
10 SHOULD USE THE TEAMSTERS?

11 A. I DON'T RECALL THAT I DID GIVE HIM ANY, BECAUSE HE
12 SAT IN THE SAME MEETING WITH THE MAYOR THAT I DID.

13 Q. ARE YOU SURE ABOUT THAT?

14 A. I DON'T HAVE ANY OTHER RECOLLECTION.

15 Q. OKAY. WHAT DID DAVID DUONG SAY WHEN YOU ASKED HIM
16 TO SIGN WITH THE TEAMSTERS?

17 A. I DON'T REMEMBER SPECIFICALLY, ALTHOUGH THERE WAS A
18 DISCUSSION AT SOME POINT OF COMMITTING TO MAKE HIM WHOLE ON
19 ANY ADDITIONAL COSTS HE MIGHT INCUR.

20 Q. DID YOU SAY ANYTHING TO DAVID DUONG ABOUT WHETHER
21 SIGNING WITH THE TEAMSTERS MIGHT IMPACT NORCAL'S CHANCES OF
22 GETTING A CONTRACT WITH THE CITY?

23 A. I DON'T REMEMBER.

24 Q. DID YOU TELL ANYONE AT THE CITY THAT DAVID DUONG
25 HAD AGREED TO SIGN WITH THE TEAMSTERS?

26 A. I DON'T RECALL, BUT I WOULDN'T HAVE BEEN THE PERSON
27 TO HAVE DONE THAT, ANYWAY.

28 Q. WELL, AT SOME POINT DID DAVID DUONG AGREE TO SIGN

1 WITH THE TEAMSTERS, AFTER OCTOBER 6, 2000?

2 A. I BELIEVE HE DID. I'M NOT SURE HOW IT HAPPENED.

3 Q. I'M NOT ASKING YOU WHETHER HE ACTUALLY SIGNED. I'M
4 ASKING WHETHER AT SOME POINT HE MADE SOME KIND OF COMMITMENT
5 TO GO AHEAD AND SIGN THE TEAMSTERS RATHER THAN THE
6 LONGSHOREMEN FOR CWS' S FACILITY IN SAN JOSE. DID THAT
7 HAPPEN?

8 A. I BELIEVE IT DID.

9 Q. WAS THAT SOMETIME SHORTLY AFTER THE OCTOBER 6
10 MEETING WITH THE MAYOR?

11 A. I THINK SO.

12 Q. AND WHEN MR. DUONG MADE THAT COMMITMENT TO YOU, DID
13 YOU OR ANYONE ELSE IN BEHALF OF NORCAL REPORT THAT BACK TO
14 THE MAYOR?

15 A. PROBABLY, BUT WITHOUT LOOKING AT SOMETHING, I DON'T
16 REMEMBER.

17 Q. WELL, WHO HAD AT THE CITY WOULD YOU HAVE REPORTED
18 THAT BACK TO?

19 A. I DON'T KNOW.

20 MR. FINKELSTEIN: I WILL ASK TO MARK AS EXHIBIT 74
21 AN EXCERPT FROM A ROUGH DRAFT OF A TRANSCRIPT OF AN
22 ARBITRATION PROCEEDING FROM AUGUST 22ND OF 2005 BETWEEN CWS
23 AND NORCAL. AND IT'S PAGES ONE, TWO, THREE, FOUR, AND THEN
24 PAGES 118 AND 119, WHICH CONTAIN THE EXCERPT.

25 I WILL SHOW YOU IN A MOMENT THE EXCERPT. YOU
26 TESTIFIED AT THE ARBITRATION PROCEEDING; IS THAT CORRECT?

27 A. THE ARBITRATION BETWEEN CWS AND NORCAL? YES, I
28 DID.

1 Q. THAT WAS IN AUGUST OF 2005?

2 A. SOUNDS RIGHT.

3 Q. AROUND THE SAME TIME AS THE OP-ED PIECE?

4 A. MAYBE.

5 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
6 JURY EXHIBIT 74.)

7 BY MR. FINKELSTEIN:

8 Q. WHY DON'T YOU TAKE A LOOK, AND I SHOULD CAUTION YOU
9 THAT THIS IS NOT A CERTIFIED TRANSCRIPT. IT'S A ROUGH DRAFT
10 AND THERE IS A DISCLAIMER AT THE BEGINNING THAT SAYS IT MAY
11 CONTAIN ERRORS, OMISSIONS AND INACCURACIES. DO YOU SEE
12 THAT?

13 A. YES.

14 Q. I WANT YOU TO READ IT TO YOURSELF, GO TO THE LAST
15 PAGE OF THE DOCUMENT, WHICH IS PAGE 119.

16 A. CAN I READ THE WHOLE THING?

17 Q. YOU CAN, BUT I'M GOING TO FOCUS YOUR ATTENTION.

18 A. OKAY.

19 Q. THIS IS ACTUALLY A PRINTOUT OF A DIGITAL COPY OF
20 THE TRANSCRIPT THAT NORCAL'S LAWYER HAS SUPPLIED TO US IN
21 CONNECTION WITH THE SUBPOENA THAT WAS SERVED ON NORCAL.

22 HAVE YOU HAD A CHANCE TO REVIEW THE DOCUMENT IN
23 ITS ENTIRETY?

24 A. YES.

25 Q. DIRECTING YOUR ATTENTION TO PAGE 00119, THE LAST
26 PAGE OF THE EXHIBIT, LET ME DIRECT YOUR ATTENTION TO LINE
27 14. ACTUALLY, LINE 15 AND 16.

28 WHY DON'T YOU READ THAT TO YOURSELF FOR A SECOND

- 1 AND SEE IF THAT ASSISTS YOUR RECOLLECTION ON WHETHER OR NOT
2 NORCAL TOLD THE CITY THAT DAVID DUONG WAS AGREEABLE TO GOING
3 WITH THE TEAMSTERS IF HE WAS MADE WHOLE.
- 4 HAVE YOU HAD A CHANCE TO REVIEW IT?
- 5 A. YES.
- 6 Q. HAS IT HELPED YOUR RECOLLECTION?
- 7 A. I THINK THAT'S WHAT HAPPENED.
- 8 Q. SO MY QUESTION IS WHO IN THE CITY WAS THAT TOLD TO?
- 9 A. I DON'T REMEMBER.
- 10 Q. AND WHO FROM NORCAL TOLD SOMEONE IN THE CITY THAT
11 DAVID DUONG WAS AGREEABLE TO GOING WITH THE TEAMSTERS?
- 12 A. I DON'T REMEMBER.
- 13 Q. PRIOR TO THE FIRST CITY COUNCIL VOTE ON THE
14 SELECTION OF RECYCLE PLUS CONTRACTORS ON OCTOBER 10, 2000,
15 DID NORCAL AMEND ITS AGREEMENT WITH CWS FOR THE RECYCLING
16 WORK IN SAN JOSE?
- 17 A. I THINK SO.
- 18 Q. LET ME HAVE YOU LOOK AT EXHIBIT 15 FOR A MOMENT.
19 I'LL PUT A COPY UP ON THE SCREEN. IS THAT YOUR SIGNATURE ON
20 EXHIBIT 15?
- 21 A. THE ONE ON THE LEFT IS.
- 22 Q. THE ONE ABOVE THE WORDS MICHAEL J. SANGIACOMO,
23 PRESIDENT?
- 24 A. YES.
- 25 Q. OKAY. AND BENEATH THE WORDS, FOR NORCAL WASTE
26 SYSTEMS, INC., THAT'S YOUR SIGNATURE?
- 27 A. THAT'S CORRECT.

28 Q. DID YOU SIGN IT ON THE DATE INDICATED, OCTOBER 9,

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1 2000?

2 A. PROBABLY.

3 Q. IS THERE SOME DOUBT ABOUT THAT IN YOUR
4 RECOLLECTION?

5 A. NO. I THINK I DID BUT --

6 Q. DO YOU HAVE ANY REASON TO BELIEVE YOU PREDATED OR
7 POSTDATED THE DATE OF YOUR SIGNATURE ON THIS AGREEMENT?

8 A. NO.

9 Q. WHAT IS THIS DOCUMENT, EXHIBIT 15?

10 A. IT'S ENTITLED ADDENDUM TO AGREEMENT BETWEEN NORCAL
11 WASTE SYSTEMS, INC. AND CALIFORNIA WASTE SOLUTIONS, INC. FOR
12 PROCESSING RESIDENTIAL RECYCLEABLES FROM THE CITY OF
13 SAN JOSE.

14 Q. I SEE THAT. I'M ASKING YOU TO TELL US IN YOUR OWN
15 WORDS WHAT THAT AGREEMENT IS.

16 A. THIS AGREEMENT PUT INTO WRITING THE AGREEMENT
17 BETWEEN NORCAL AND CWS THAT WE IN EFFECT WOULD MAKE THEM
18 WHOLE ON INCREASED COSTS OF USING TEAMSTER LABOR AT THEIR
19 RECYCLING FACILITY INSTEAD OF LONGSHOREMEN, IF THEY NOTIFIED
20 THE CITY OF SAN JOSE THEY WERE GOING TO DO THAT BY THIS
21 DOCUMENT, I GUESS.

22 Q. OKAY. THIS IS THE DAY BEFORE THE FIRST CITY
23 COUNCIL VOTE ON OCTOBER 10, 2000, CORRECT?

24 A. YES, I BELIEVE THAT'S RIGHT.

25 Q. DO YOU RECOLLECT IF THE CITY COUNCIL MET ON

26 TUESDAYS IN SAN JOSE?

27 A. YES, I DO REMEMBER THAT.

28 Q. SO THE OCTOBER 9TH AGREEMENT WOULD HAVE BEEN ON A

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1 MONDAY, CORRECT?

2 A. I THINK SO.

3 Q. YOUR OCTOBER 6TH MEETING WITH THE MAYOR WOULD HAVE
4 BEEN ON A FRIDAY, CORRECT?

5 A. THAT'S WHY I THINK THIS WAS A MONDAY. YOU TOLD ME
6 THAT WAS A FRIDAY.

7 Q. I DON'T WANT YOU TO RELY ON WHAT I TOLD YOU. IF
8 YOU RECOLLECT THE MEETING WAS ON TUESDAY, YOU SAID IT WAS
9 THE DAY BEFORE. THAT WOULD MAKE IT MONDAY?

10 A. ABSOLUTELY.

11 Q. YOU AGREE WITH THAT?

12 A. YES.

13 Q. SO BY THIS DOCUMENT WERE YOU OBLIGATING YOUR
14 COMPANY, NORCAL, OWNED BY THESE EMPLOYEES THROUGH THEIR
15 ESOP, TO PAY AN ESTIMATED TWO MILLION A YEAR OVER FIVE YEARS
16 IF CWS AGREED TO SIGN WITH THE TEAMSTERS?

17 A. I THINK SO.

18 Q. AND YOU'RE TELLING US THAT WHEN YOU ENTERED INTO
19 THIS OBLIGATION OF AN ESTIMATED TWO MILLION A YEAR OVER FIVE
20 YEARS YOU HAD NO FIRM DEAL WITH THE MAYOR OR THE CITY ABOUT
21 GETTING REIMBURSED FOR THESE SUMS OF MONIES?

22 A. WE HAD THE MAYOR'S PROMISE TO GIVE US HIS BEST
23 EFFORTS TO GET US THE MONEY.

24 Q. YOU HAD A PROMISE TO TRY, NOT A PROMISE TO PAY; IS
25 THAT WHAT YOU'RE SAYING?

26 A. THAT'S THE WAY I UNDERSTOOD IT, YES.

27 Q. DID YOU THINK THAT WAS A PRUDENT COURSE OF BUSINESS
28 TO FOLLOW TO OBLIGATE YOUR COMPANY TO PAY AN ESTIMATED TWO

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1 MILLION A YEAR OVER FIVE YEARS IN ADDITIONAL LABOR COSTS FOR
2 CWS USING THE TEAMSTERS WITH NOTHING MORE THAN A PROMISE TO
3 TRY FROM THE MAYOR REGARDING REIMBURSING NORCAL FOR THAT
4 MONEY?

5 A. IT WAS A BUSINESS RISK WE CONSIDERED AND DECIDED TO
6 TAKE.

7 Q. WHAT WAS NORCAL'S YEARLY PROFIT ON THIS CONTRACT?

8 A. WHAT WAS IT?

9 Q. YEAH.

10 A. AT WHAT POINT IN TIME?

11 Q. WELL, THE CONTRACT PROPOSAL WENT IN IN 2000. YOU
12 WERE SUPPOSED TO START IN 2002 FOR FIVE YEARS, RIGHT?

13 A. MM-HMM.

14 Q. SO I ASSUME YOU PUT YOUR PROPOSAL IN TO THE CITY
15 WHEN YOU HAD PERFORMED SOME COMPUTATION OR SOMEONE AT NORCAL
16 TO MAKE SURE THAT THIS WAS A PROFITABLE ARRANGEMENT FOR
17 NORCAL, RIGHT?

18 A. WE DID AN ESTIMATE.

19 Q. RIGHT. THEY CALL THAT PRO FORMA, DO THEY?

20 A. THAT'S IT, THAT'S ONE WAY TO CALL IT.

21 Q. I ASSUME NORCAL WASN'T SEEKING THE CONTRACT TO LOSE

- 22 MONEY, THEY WERE TRYING TO MAKE MONEY, RIGHT?
- 23 A. THAT WOULD HAVE BEEN THE GOAL.
- 24 Q. OKAY. HOW MUCH DID NORCAL STAND TO MAKE EITHER IN
- 25 TOTAL OR YEARLY IF THIS CONTRACT HAD GONE THROUGH PRIOR TO
- 26 THIS AMENDMENT?
- 27 A. I DON'T REMEMBER THE NUMBERS IN THE PRO FORMA.
- 28 Q. IS THAT SOMETHING --

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- 1 A. I COULD GIVE YOU AN ESTIMATE OF WHAT WE NORMALLY
- 2 WOULD HAVE DONE. I DON'T KNOW THAT'S WHAT WE DID IN THIS
- 3 CASE.
- 4 Q. BEFORE YOU GIVE US YOUR ESTIMATE, BACK IN 2000 YOU
- 5 HAD FINAL APPROVAL ON WHETHER THE PROPOSAL WAS SUBMITTED TO
- 6 THE CITY?
- 7 A. YES.
- 8 Q. YOU HAVE AN ACCOUNTING BACKGROUND, CORRECT?
- 9 A. THAT'S CORRECT.
- 10 Q. YOU WERE FORMERLY A CFO OF NORCAL?
- 11 A. THAT'S CORRECT.
- 12 Q. YOU'RE A CPA ALTHOUGH INACTIVE?
- 13 A. THAT'S CORRECT.
- 14 Q. I TAKE IT THE PRO FORMA WOULD HAVE HAD MORE THAN
- 15 PASSING INTEREST IN YOUR MIND BEFORE DECIDING TO APPROVE
- 16 THIS PROPOSAL, CORRECT?
- 17 A. YES, IT DID.
- 18 Q. SO WHAT IS YOUR BEST ESTIMATE OF WHAT NORCAL STOOD
- 19 TO PROFIT ON THIS DEAL HAD THE CONTRACT BEEN APPROVED AS

20 ORIGINALLY PROPOSED TO THE CITY?

21 A. SOMEWHERE IN THE RANGE OF ABOUT A THREE TO FOUR
22 MILLION DOLLAR PROFIT, OPERATING PROFIT, WHICH AFTER
23 DEPRECIATION OF EQUIPMENT, FACILITIES AND INTEREST PROBABLY
24 WOULD HAVE BEEN IN THE AREA OF A MILLION DOLLARS A YEAR, NET
25 PROFIT.

26 Q. SO YOU ENTERED INTO THIS ADDENDUM WHICH IF
27 UNREIMBURSED BY THE CITY WOULD HAVE TURNED THAT ONE MILLION
28 A YEAR NET OPERATING PROFIT INTO APPROXIMATELY A ONE MILLION

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1 DOLLAR A YEAR NET OPERATING LOSS; ISN'T THAT TRUE?

2 A. IF MY MEMORY IS CORRECT ON THE NUMBERS, YES.

3 Q. AND YOU STILL MAINTAIN THAT YOU HAVE NO FIRM
4 UNDERSTANDING WITH THE MAYOR ABOUT THE CITY REIMBURSING THIS
5 ESTIMATED TWO MILLION A YEAR EXTRA COST?

6 A. WE THOUGHT THAT HE WOULD BE A MAN OF HIS WORD AND
7 LIVE UP TO THE PROMISES HE MADE.

8 Q. ARE YOU TELLING US HE DIDN'T PROMISE TO PAY YOU THE
9 MONEY, HE SIMPLY PROMISED THAT HE WOULD TRY TO GET YOU THE
10 MONEY?

11 A. THAT'S WHAT WE EXPECTED HE WOULD DO.

12 Q. DID YOU DISCUSS THAT ADDENDUM WITH THE BOARD OF
13 DIRECTORS?

14 A. AT SOME POINT, YES. I DON'T REMEMBER WHEN.

15 Q. PRIOR TO SIGNING IT?

16 A. I DON'T REMEMBER.

17 Q. WELL, THERE WOULDN'T HAVE BEEN A LOT OF TIME TO

18 DISCUSS IT WITH THE BOARD, BECAUSE YOU HAD THE MEETING ON
19 OCTOBER 6, A FRIDAY, AND THIS IS SIGNED MONDAY, OCTOBER 9,
20 RIGHT?

21 A. THAT'S CORRECT.

22 Q. DID YOU SUBSEQUENTLY DISCUSS IT WITH THE BOARD?

23 A. AT SOME POINT, YES.

24 Q. DID YOU SHARE WITH THE BOARD WHY YOU THOUGHT THIS
25 WAS A REASONABLE LIABILITY TO ASSUME GIVEN WHAT THE MAYOR
26 HAD TOLD YOU ON OCTOBER 6?

27 A. I BELIEVE SO.

28 Q. WOULD THAT BE REFLECTED IN THE MINUTES OF THE

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1 BOARD?

2 A. PROBABLY NOT IN ANY DETAIL.

3 Q. TURNING AN ESTIMATED TWO MILLION -- TURNING AN
4 ESTIMATED ONE MILLION A YEAR NET OPERATING PROFIT INTO A ONE
5 MILLION A YEAR NET OPERATING LOSS OVER FIVE YEARS WAS A
6 DETAIL THAT DIDN'T NEED TO BE REFLECTED IN THE MINUTES?

7 A. THE MINUTES GENERALLY DO NOT REFLECT A TREMENDOUS
8 AMOUNT OF DETAIL.

9 Q. LET ME ASK YOU THIS: BECAUSE OF THE ESOP, ARE
10 THERE ANNUAL AUDITS OF THE FINANCIALS OF NORCAL?

11 A. THERE ARE ANNUAL AUDITS OF NORCAL'S FINANCES, YES.

12 Q. AND HOW DID NORCAL CARRY THIS ESTIMATED TWO MILLION
13 A YEAR EXTRA COST ON ITS FINANCIALS?

14 A. I BELIEVE WE RECORDED AN EXPENSE AND RECORDED A
15 RECEIVABLE FROM THE CITY OF SAN JOSE.

- 16 Q. SORRY, WHAT?
- 17 A. A RECEIVABLE FROM THE CITY OF SAN JOSE.
- 18 Q. A RECEIVABLE. IS THAT WHAT YOU SAID?
- 19 A. YES.
- 20 Q. AND FOR THOSE OF US WHO DO NOT HAVE AN ACCOUNTING
21 BACKGROUND, WHAT IS A RECEIVABLE?
- 22 A. IT'S AN ASSET REFLECTING MONEY DUE FROM ANOTHER
23 PARTY.
- 24 Q. AND WHAT WAS THE RECEIVABLE IN THIS CASE?
- 25 A. PAYMENT FOR INCREASED COSTS FROM THE RECYCLE PLUS
26 CONTRACT.
- 27 Q. PAYMENT FROM WHOM?
- 28 A. WE EXPECTED IT FROM THE CITY OF SAN JOSE.

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- 1 Q. BUT YOU TOLD US IT WASN'T A FIRM DEAL. IS IT
2 PROPER AS AN ACCOUNTING PRACTICE TO LIST AS A RECEIVABLE
3 SOMETHING THAT'S MERELY AN EXPECTANCY, NOT A FIRM DEAL?
- 4 A. UH -- APPARENTLY WE PROVIDED --
- 5 Q. WAIT TILL THE PLANE GOES -- DO YOU WANT ME TO
6 REPEAT THE QUESTION?
- 7 A. NO, I THINK IT'S OKAY. APPARENTLY, WE PROVIDED
8 ADEQUATE SUPPORT TO OUR AUDITORS FOR IT BEING RECORDED AS A
9 RECEIVABLE.
- 10 Q. WHAT SUPPORT DID YOU PROVIDE?
- 11 A. (SHAKING HEAD NEGATIVELY.)
- 12 Q. YOU HAD NOTHING IN WRITING FROM THE CITY, CORRECT?
- 13 A. NO. I DON'T KNOW.

14 Q. WAS KPMG THE AUDITORS?

15 A. YES.

16 Q. WHO WAS THE PARTNER OF KPMG WHO SUPERVISED THE
17 AUDITING OF NORCAL IN 2000, 2001, 2002, 2003?

18 A. UH -- AT LEAST FOR SOME OF THOSE YEARS, PAULETTE
19 DEFALCO.

20 Q. COULD YOU SPELL THAT FOR THE REPORTER?

21 A. LOWER CASE D-E, CAPITAL F-A-L-C-O. AND BEFORE HER,
22 AND I DON'T KNOW WHAT YEAR THE CHANGE HAPPENED, I THINK IT
23 WAS GLENN FARRELL, F-A-R-R-E-L-L.

24 Q. BY THE WAY, THE TEAMSTERS AREN'T MENTIONED BY NAME
25 IN THIS ADDENDUM, ARE THEY?

26 A. I DON'T SEE THEM, NO.

27 Q. BUT IT WAS YOUR UNDERSTANDING AND MR. DUONG'S
28 UNDERSTANDING THAT THAT'S WHAT THIS AGREEMENT WAS IN

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1 REFERENCE TO, CHANGES FROM LONGSHOREMEN TO TEAMSTERS,
2 CORRECT?

3 A. IT CERTAINLY WAS MY UNDERSTANDING.

4 Q. AND IS THERE SOME REASON WHY THE TEAMSTERS AREN'T
5 MENTIONED BY NAME IN THIS AGREEMENT?

6 A. I DON'T KNOW.

7 Q. I'M SORRY?

8 A. I DON'T KNOW.

9 Q. WOULD IT HAVE TO DO WITH ANYTHING THE FACT YOU FELT
10 A LITTLE UNEASY REQUIRING CWS TO USE ONE UNION OVER ANOTHER
11 UNION?

- 12 A. I JUST DON' T REMEMBER.
- 13 Q. OKAY. WHO DRAFTED THIS AGREEMENT?
- 14 A. I DON' T REMEMBER.
- 15 Q. DID NORCAL EMPLOY THE SERVICES OF AN ATTORNEY TO
16 REVIEW THE AGREEMENT?
- 17 A. I DON' T RECALL.
- 18 Q. CAN YOU TELL THE JURY WHAT THE NORMAL ACCOUNTING
19 STANDARDS ARE FOR RECOGNIZING AN EXPECTED PAYMENT AS A
20 RECEIVABLE?
- 21 A. I THINK I HAVE BEEN AWAY FROM THE ACCOUNTING
22 LITERATURE TOO LONG TO REALLY HAVE A GOOD GRASP OF THAT ANY
23 LONGER.
- 24 Q. WHAT WAS YOUR RECOLLECTION BEFORE YOU LEFT THE
25 ACCOUNTING LITERATURE?
- 26 A. THAT' S A LONG TIME AGO; I JUST DON' T REMEMBER.
- 27 Q. DID YOU DISCUSS IT WITH THE NORCAL CFO WHETHER OR
28 NOT YOUR EXPECTED REIMBURSEMENT FROM THE CITY SHOULD BE

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- 1 CARRIED ON NORCAL' S FINANCIALS AS A RECEIVABLE?
- 2 A. I' M PRETTY SURE I DID.
- 3 Q. WHO WAS THAT?
- 4 A. THE CFO, MARK LOMELE, L-O-M-E-L-E.
- 5 Q. IS HE STILL EMPLOYED BY NORCAL?
- 6 A. YES.
- 7 Q. IN SAN FRANCISCO?
- 8 A. YES.
- 9 Q. DID YOU SEEK ASSURANCES FROM ANY MEMBER OF THE CITY

10 COUNCIL BEFORE DECIDING TO BOOK THIS AS A RECEIVABLE?

11 A. NOT THAT I REMEMBER.

12 Q. DID YOU SEEK ASSURANCES FROM ANYONE AT THE
13 ENVIRONMENTAL SERVICES DEPARTMENT THAT THE CITY WOULD PAY
14 THE ADDITIONAL COSTS OF HAVING THE TEAMSTERS REPRESENT THE
15 CWS RECYCLEABLE WORKERS BEFORE YOU EVEN BOOKED THIS AS A
16 RECEIVABLE?

17 A. I DON'T REMEMBER.

18 Q. WHICH, WHEN DOES YOUR FISCAL YEAR END AGAIN,
19 SEPTEMBER?

20 A. SEPTEMBER 30TH.

21 Q. SO WHEN, WHICH FINANCIAL PERIOD WOULD YOUR EXPECTED
22 REIMBURSEMENT FROM THE CITY HAVE FIRST BEEN CARRIED ON THE
23 BOOKS AS A RECEIVABLE? WOULD IT HAVE BEEN THE PERIOD THAT
24 INCLUDED OCTOBER 9, 2000, WHEN THE LIABILITY AROSE?

25 A. IT SHOULD NOT HAVE BEEN. I DON'T THINK IT WAS
26 2000.

27 Q. I TAKE IT WERE YOU RECORDING ON A CASH BASIS OR AN
28 ACCRUAL BASIS?

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1 A. WE RECORD ON AN ACCRUAL BASIS.

2 Q. NOW, THIS DOCUMENT WAS SIGNED ON OCTOBER 9TH OF
3 2000 BY YOU, CORRECT?

4 A. YES.

5 Q. BUT THE OPERATION DIDN'T START UNTIL JULY 1 OF '02,
6 CORRECT?

7 A. THAT'S CORRECT.

8 Q. SO CWS WOULD NOT HAVE INCURRED ANY ADDITIONAL
9 EXPENSES UNTIL AROUND JULY 1 OF '02, CORRECT?

10 A. SHOULD NOT HAVE.

11 Q. AND THEREFORE NORCAL'S OBLIGATION TO REIMBURSE CWS
12 WOULD NOT HAVE STARTED RUNNING UNTIL APPROXIMATELY JULY
13 OF '02, CORRECT?

14 A. THAT'S PROBABLY CORRECT.

15 Q. THEREFORE, WOULD YOU EXPECT THAT THE FINANCIAL
16 STATEMENT THAT INCLUDED JULY OF '02 AND FORWARD WOULD HAVE
17 BOOKED THIS EXPECTED REIMBURSEMENT FROM THE CITY AS A
18 RECEIVABLE?

19 A. SOME DATE AFTER JULY OF '02 WOULD BE WHEN IT
20 RECORDED. I DON'T REMEMBER WHEN WE FIRST RECORDED.

21 MR. FINKELSTEIN: WHY DON'T WE TAKE A TEN-MINUTE
22 RECESS.

23 THE FOREMAN: LET US RECESS UNTIL ABOUT A QUARTER
24 OF 3:00.

25 (A BRIEF RECESS WAS TAKEN.)

26 THE FOREMAN: LET THE RECORD NOTE THAT ALL JURORS
27 ARE PRESENT.

28 MR. FINKELSTEIN: WE WILL ASK MR. SANGIACOMO TO

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1 STEP BACK IN.

2 BY MR. FINKELSTEIN:

3 Q. MR. SANGIACOMO, I WILL JUST REMIND YOU YOU'RE STILL
4 UNDER OATH. WHO IS JON BRASLAW?

5 A. JON BRASLAW IS OUR CORPORATE CONTROLLJON BRASLAW

6 THE CORPORATE CONTROLLER IN OCTOBER OF 2003
7 A. I'M PRETTY SURE HE WAS, YES.
8 Q. IS HE SOMEONE WHO WOULD HAVE INTERFACED WITH KPMG
9 REGARDING HOW THIS EXPECTED REIMBURSEMENT FROM THE CITY
10 SHOULD BE CARRIED ON NORCAL'S BOOKS?
11 A. HE PROBABLY WAS, YES.
12 Q. IS HE SOMEONE THAT YOU DISCUSSED THE OCTOBER 6TH
13 MEETING WITH THE MAYOR WITH?
14 A. I DON'T REMEMBER.
15 Q. YOU TOLD US BEFORE THE BREAK THAT YOU MIGHT HAVE
16 DISCUSSED YOUR OCTOBER 6TH MEETING WITH THE MEMBERS OF THE
17 NORCAL BOARD OF DIRECTORS, CORRECT?
18 A. YES.
19 Q. CAN YOU TELL US THE NAMES OF THOSE PERSONS?
20 A. AS OF TODAY --
21 Q. NO. THE NAMES OF THE PERSON WHO WERE ON THE BOARD
22 IN 2000 WHEN YOU MIGHT HAVE DISCUSSED YOUR OCTOBER 6TH
23 MEETING WITH THE MAYOR.
24 A. I DON'T HAVE A -- I'LL GIVE MY BEST RECOLLECTION OF
25 WHO THEY WERE THEN. WELTON FLYNN, F-L-Y-N-N.
26 GALE, G-A-L-E, KAUFMAN.
27 I THINK SYLVIA KWAN, K-W-A-N.
28 I'M FOGGY ON WHO THE OTHER DIRECTORS WERE BACK

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1 THEN
2 Q. I ASSUME YOU HAVE MINUTES OR DOCUMENTS OF NORCAL
3 THAT WOULD REFLECT THEIR NAMES; IS THAT CORRECT?

- 4 A. THERE SHOULD BE, YES.
- 5 Q. AND I TAKE IT EVEN THOUGH THIS IS AN ESOP, YOUR
6 CONVERSATION WITH THE MAYOR IS NOT SOMETHING THAT YOU
7 DISCUSSED WITH ANY OF THE EMPLOYEE OWNERS OF THE COMPANY,
8 CORRECT, OTHER THAN THE PERSONS YOU'VE IDENTIFIED ALREADY?
- 9 A. THERE WOULD HAVE BEEN OTHERS, BUT I DON'T REMEMBER
10 WHO, IF ANY.
- 11 Q. AND A DECISION SUCH AS ENTERING INTO AN ADDENDUM
12 WITH CWS TO PAY AN ESTIMATED TWO MILLION A YEAR FOR THE
13 ADDITIONAL COST FOR CWS AND TEAMSTERS, I TAKE IT THAT IS NOT
14 SOMETHING YOU WOULD HAVE DISCUSSED JUST WITH EMPLOYEE OWNERS
15 OF THE COMPANY, CORRECT?
- 16 A. NOT IN ANY SPECIFICITY.
- 17 Q. WE TALKED ABOUT THE MAYOR'S MEETING OF FRIDAY,
18 OCTOBER 6 AND ADDENDUM ON MONDAY, OCTOBER 9TH. NOW WE'RE UP
19 TO THE TUESDAY, OCTOBER 10 COUNCIL MEETING, THE FIRST VOTE
20 ON THE SELECTION OF RECYCLE PLUS SERVICE PROVIDERS. WERE
21 YOU THERE?
- 22 A. I AM PRETTY SURE I WAS, YES.
- 23 Q. WAS ANYONE ELSE THERE ON BEHALF OF NORCAL?
- 24 A. THERE WERE OTHERS.
- 25 Q. CAN YOU GIVE US THE NAMES?
- 26 A. I BELIEVE BILL JONES, I BELIEVE JOHN NICOLETTI, AND
27 I WOULD BE GUESSING ON ANY OTHERS.
- 28 Q. DID NORCAL EMPLOY THE SERVICES OF A LOBBYIST TO

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1 ASSIST IN GETTING THIS CONTRACT WITH THE CITY?

2 A. WE HAVE AND HAD THEN A RELATIONSHIP WITH A COUPLE
3 OF GOVERNMENTAL AFFAIRS SPECIALISTS, IF THAT IS WHAT YOU
4 MEAN BY LOBBYIST.

5 Q. WOULD THAT BE ED GARDNER?

6 A. IT WAS HIS FIRM.

7 Q. DID YOU ATTEND, I THINK IT WAS SOMETHING LIKE AN
8 HOUR-LONG HEARING ON THE AWARDING OF THIS CONTRACT, DOES
9 THAT SOUND RIGHT?

10 A. ON --

11 Q. OCTOBER 10, FIRST HEARING.

12 A. THE CITY COUNCIL MEETING?

13 Q. YES.

14 A. I BELIEVE I WAS THERE, YES.

15 Q. I'M SAYING THIS CITY COUNCIL MEETING, DID IT GO A
16 LONG TIME, THE MEETING, THE PORTION OF THE MEETING DEALING
17 WITH THE SELECTION OF CONTRACTORS?

18 A. I DON'T HAVE A RECOLLECTION.

19 Q. DID ANYONE IN NORCAL, YOURSELF INCLUDED, OR ANYONE
20 ELSE BRING UP AT THE CITY COUNCIL MEETING THIS ISSUE ABOUT
21 NORCAL NEEDING TO GET REIMBURSED FOR CWS' S EXTRA EXPENSES IN
22 EMPLOYING TEAMSTERS IN THE RECYCLE FACILITY?

23 A. I DON'T REMEMBER.

24 Q. DO YOU RECALL THAT AT THE CONCLUSION OF THE COUNCIL
25 MEETING THE COUNSEL VOTED TO REFER THE NORCAL PROPOSAL TO
26 THE CITY AUDITOR FOR A DETERMINATION OF NORCAL' S OPERATIONAL
27 ADEQUACY AND ITS FINANCIAL CAPABILITY TO PERFORM?

28 A. I REMEMBER THERE WAS A REFERRAL TO THE CITY

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1 AUDITOR, I DON'T RECALL WHEN THAT HAPPENED.

2 Q. DO YOU REMEMBER THAT THERE WERE TWO VOTES REGARDING
3 THE SELECTION OF CONTRACTORS, THERE WAS THE FIRST VOTE ON
4 TUESDAY, OCTOBER 10, 2000, AND THERE WAS A DECEMBER 12, 2000
5 FINAL VOTE WHICH ACTUALLY MADE THE SELECTION. DO YOU RECALL
6 THAT?

7 A. I REMEMBER TWO VOTES.

8 Q. DO YOU REMEMBER THEY ARE ROUGHLY THE OCTOBER AND
9 DECEMBER TIME FRAME?

10 A. IT SOUNDS RIGHT.

11 Q. DO YOU RECALL IN BETWEEN THE TWO DATES THERE WAS
12 REFERRAL TO THE CITY AUDITOR TO LOOK AT THE FINANCIAL
13 CAPABILITY OF NORCAL TO PERFORM UNDER THE CONTRACT?

14 A. I HAVE A RECOLLECTION THAT SOMETHING LIKE THAT
15 HAPPENED.

16 Q. AND AS SOMEBODY WITH A FINANCIAL BACKGROUND WHO WAS
17 LICENSED AS A CPA, ALTHOUGH INACTIVE CURRENTLY, WHO WAS THE
18 CEO OF NORCAL, WOULD THAT EXTRA TWO MILLION DOLLARS IN
19 EXPENSES THAT NORCAL WAS HOPING TO GET REIMBURSED FROM THE
20 CITY AND WITHOUT WHICH NORCAL WOULD HAVE A MILLION DOLLAR
21 OPERATING LOSS FOR A YEAR, IS SOMETHING THAT YOU WOULD HAVE
22 EXPECTED THE CITY AUDITOR WOULD HAVE WANTED TO HAVE KNOWN
23 ABOUT IN PERFORMING HIS REVIEW?

24 A. I HAVE NO RECOLLECTION OF WHAT THE AUDITOR LOOKED
25 AT OR ASKED US ABOUT.

26 Q. DO YOU HAVE ANY RECOLLECTION OF ANYONE FROM NORCAL
27 COMMUNICATING TO THE AUDITOR THIS ISSUE ABOUT THE EXTRA
28 COSTS ASSOCIATED WITH CWS USING TEAMSTERS?

1 A. I DON'T HAVE ANY RECOLLECTION OF ANYONE IN NORCAL
2 COMMUNICATING WITH THE AUDITOR, PERIOD.

3 Q. I TAKE IT YOU DO RECALL AT THE DECEMBER 12, 2000
4 CITY COUNCIL MEETING NORCAL WAS SELECTED AS ONE OF THE
5 RECYCLE PLUS SERVICE PROVIDERS?

6 A. I REMEMBER WE WERE SELECTED. AGAIN, I THINK THAT'S
7 THE RIGHT DATE.

8 Q. AND I TAKE IT FOLLOWING THIS SECOND COUNCIL MEETING
9 WHERE NORCAL WAS SELECTED, WHETHER THAT IS DECEMBER 12 OR
10 SOME OTHER DAY, THERE FOLLOWED A PERIOD OF SEVERAL MONTHS
11 BEFORE NORCAL SIGNED AN AGREEMENT WITH THE CITY OF SAN JOSE?

12 A. THAT SOUNDS RIGHT.

13 Q. WHY DON'T YOU LOOK AT EXHIBIT 26. TELL US IF YOU
14 CAN IDENTIFY THIS EXHIBIT, PLEASE. AND LET ME DIRECT YOUR
15 ATTENTION -- YOU CAN TAKE AS MUCH TIME AS YOU WANT, I DON'T
16 MEAN TO RUSH YOU, BUT IT IS PAGE 70 WHERE YOUR SIGNATURE
17 APPEARS.

18 A. I SEE THE CAPTION ON THE FRONT, IT LOOKS LIKE
19 AGREEMENT. I SEE THE SIGNATURE. THERE'S A LOT OF LOOSE
20 STUFF IN THE MIDDLE I HAVEN'T LOOKED AT.

21 Q. WHEN DID YOU SIGN THIS AGREEMENT?

22 A. IT LOOKS LIKE IT'S DATED MARCH 27TH, 2001. I
23 PRESUME THAT'S THE DATE I SIGNED IT.

24 Q. OKAY. YOU HAVE NO REASON TO BELIEVE IT WAS
25 PREDATED OR POSTDATED?

26 A. NO.

27 Q. IF IN FACT THE CITY COUNCIL VOTE ON THE SELECTION
28 OF NORCAL WAS DECEMBER 10TH, THIS WOULD HAVE BEEN SOME THREE

1 AND A HALF MONTHS AFTER NORCAL WAS SELECTED BY THE CITY
2 COUNCIL, CORRECT?

3 A. IT APPEARS TO BE, YES.

4 Q. AND WAS NORCAL REPRESENTED BY COUNSEL IN THE
5 PREPARATION AND NEGOTIATION OF THIS AGREEMENT?

6 A. I THINK WE HAD AN ATTORNEY LOOK AT IT, BUT I REALLY
7 DON'T REMEMBER. BUT THE CONTRACT WAS PROVIDED, IF I
8 REMEMBER CORRECTLY, IN THE RFP AS, HERE'S THE AGREEMENT. SO
9 THERE WASN'T A LOT OF NEGOTIATIONS.

10 Q. SO WHY DID IT TAKE THREE AND A HALF MONTHS TO GET
11 THE AGREEMENT SIGNED?

12 A. I DON'T KNOW.

13 Q. ARE YOU SAYING YOU WEREN'T, NORCAL WASN'T
14 REPRESENTED BY COUNSEL IN THE PREPARATION AND NEGOTIATION OF
15 THIS AGREEMENT?

16 A. I DIDN'T SAY THAT.

17 Q. SO THEN NORCAL WAS REPRESENTED BY COUNSEL IN THE
18 NEGOTIATION AND PREPARATION OF THE AGREEMENT.

19 A. AGAIN, WE DIDN'T HAVE REALLY A HAND IN PREPARING
20 THIS AGREEMENT. IT WAS, IF MEMORY SERVES, IT WAS DELIVERED
21 AS PART OF THE RFP DOCUMENT. HERE'S THE CONTRACT, SIGN IT.

22 Q. BUT MY QUESTION TO YOU IS WHETHER OR NOT NORCAL WAS
23 REPRESENTED BY COUNSEL IN THE NEGOTIATION AND PREPARATION OF
24 THE AGREEMENT. YES OR NO?

25 A. WE HAD LEGAL REPRESENTATION.

26 Q. IN THE NEGOTIATION AND PREPARATION OF THE
27 AGREEMENT?

28 A. WE DIDN'T PREPARE THE AGREEMENT. THE CITY PREPARED

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1 IT.

2 Q. I'M NOT SAYING YOU PREPARED IT.

3 A. I THOUGHT THAT WAS YOUR QUESTION.

4 Q. I'M SAYING YOU HAD LEGAL REPRESENTATION IN THE
5 NEGOTIATION AND PREPARATION OF THE AGREEMENT. IS THAT AN
6 ACCURATE STATEMENT?

7 A. WE HAD, I BELIEVE WE HAD LEGAL REPRESENTATION.

8 Q. THAT WAS TODD THOMPSON?

9 A. THAT'S MY MEMORY.

10 Q. DID NORCAL HAVE THE OPPORTUNITY TO CONTRIBUTE TO
11 THE TERMS AND CONDITIONS OF THE AGREEMENT?

12 A. I BELIEVE IF YOU TOOK EXCEPTION TO ANY PROVISIONS
13 IN THE AGREEMENT, THOSE EXCEPTIONS HAD TO BE INCLUDED IN
14 YOUR RESPONSE TO THE RFP.

15 Q. OKAY. LET ME ASK THE QUESTION AGAIN. DID NORCAL
16 HAVE THE OPPORTUNITY TO CONTRIBUTE TO THE TERMS AND
17 CONDITIONS OF THIS AGREEMENT. THE OPPORTUNITY.

18 A. I SUPPOSE IF THERE WERE ISSUES THAT WE HAD WITH IT,
19 WE WOULD HAVE SUBMITTED THEM IN OUR RESPONSE.

20 Q. I'M NOT SAYING WHETHER YOU HAD ISSUES. I'M ASKING
21 WHETHER YOU HAD THE OPPORTUNITY TO CONTRIBUTE TO THE TERMS
22 AND CONDITIONS OF THE AGREEMENT.

23 A. I'M NOT TRYING TO BE ARGUMENTATIVE, BUT ANY ISSUES
24 WE HAD WITH IT WOULD HAVE BEEN, WE WOULD HAVE
25 SUBMITTED -- WE DID HAVE THE OPPORTUNITY, AS WE WOULD HAVE

26 SUBMITTED THEM WITH THE RESPONSE.

27 Q. WHAT'S THE ANSWER TO MY QUESTION, YES OR NO? DID
28 NORCAL HAVE AN OPPORTUNITY TO --

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1 A. I GUESS WE DID.

2 Q. I'M SORRY?

3 A. I GUESS WE DID.

4 Q. YOU'RE NOT SURE?

5 A. I TRIED TO DESCRIBE IT AS BEST AS I UNDERSTOOD IT.

6 Q. LET ME DIRECT YOUR ATTENTION TO PARAGRAPH 24.03 OF
7 THE AGREEMENT. HAVE YOU READ SECTION 24.03?

8 A. YES.

9 Q. DOES IT SAY THAT IT'S ACKNOWLEDGED THAT EACH PARTY
10 WAS OR HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL IN
11 THE PREPARATION AND NEGOTIATION OF THIS AGREEMENT AND HAVE
12 THE OPPORTUNITY TO CONTRIBUTE TO THE TERMS AND CONDITIONS OF
13 THIS AGREEMENT?

14 A. THAT'S WHAT IT SAYS.

15 Q. YOU SIGNED THIS AGREEMENT, YES?

16 A. YES.

17 Q. ARE YOU SUGGESTING THAT STATEMENT IS NOT TRUE?

18 A. WE HAD THE OPPORTUNITY TO SUBMIT ISSUES IF WE HAD
19 THEM. WHAT I AM TRYING TO TELL YOU IS WE DIDN'T HAVE MUCH
20 OF A HAND IN PREPARING THIS BECAUSE THERE WAS A CONTRACT.

21 Q. I'M ASKING WHETHER OR NOT NORCAL HAD AN OPPORTUNITY
22 TO CONTRIBUTE TO THE TERMS AND CONDITIONS, NOT WHETHER YOU
23 DID, WHETHER YOU HAD THE OPPORTUNITY.

24 A. I PRESUME WE DID.
25 Q. YOU SIGNED THAT YOU DID, RIGHT?
26 A. YES.
27 Q. OTHER THAN TODD THOMPSON, WHO MAY HAVE BEEN A
28 LAWYER ASSISTING NORCAL ON THIS AGREEMENT, WHO FROM NORCAL

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1 WORKED ON THE NEGOTIATION AND PREPARATION OF THIS AGREEMENT?
2 A. (NO RESPONSE).
3 Q. IS THERE SOMETHING UNCLEAR ABOUT THE QUESTION? I'M
4 NOT SAYING THAT NORCAL PREPARED THE AGREEMENT, I'M SAYING
5 WHO WORKED ON THE NEGOTIATIONS. I'M ASSUMING THERE WAS SOME
6 EXCHANGE, YOU HAD MEETINGS, DISCUSSIONS, DISCUSSIONS ABOUT
7 WORDS OR TERMS OR CLARIFICATION. I WANT TO KNOW WHO ON
8 NORCAL, THAT'S WHAT I'M REFERRING TO WHEN I SAY NEGOTIATION
9 AND PREPARATION, REGARDLESS OF WHO PREPARED IT ULTIMATELY.
10 SO WHO FROM NORCAL WORKED WITH THE CITY ON THE NEGOTIATION
11 AND PREPARATION OF THIS AGREEMENT?
12 A. I'M PRESUMING BILL JONES, AND I DON'T KNOW WHO
13 ELSE.
14 Q. WERE YOU KEPT INFORMED OF THE PROGRESS OF THE
15 NEGOTIATION AND PREPARATION OF THE AGREEMENT?
16 A. UH -- I DON'T KNOW THAT THERE WAS MUCH PROGRESS, IT
17 WAS ALMOST A DONE DEAL WHEN IT WAS GIVEN TO US.
18 Q. DOES THE AGREEMENT CONSIST OF 70 PAGES OF TEXT, 70,
19 NOT INCLUDING ATTACHMENTS?
20 A. YES.
21 Q. WOULD YOU CHARACTERIZE THIS AGREEMENT AS A DETAILED

22 AND COMPREHENSIVE AGREEMENT?

23 A. YES.

24 Q. IS THERE ANYTHING IN THIS 70-PAGE DETAILED AND
25 COMPREHENSIVE AGREEMENT, NOT INCLUDING ATTACHMENTS, THAT IN
26 ANY WAY MENTIONS OR REFERS TO THE CITY AGREEING TO REIMBURSE
27 NORCAL FOR CWS' S EXTRA LABOR COSTS FROM USING TEAMSTERS?

28 A. I DON'T THINK SO, BUT I HAVE NOT REVIEWED IT ALL.

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1 Q. WELL, DO YOU WANT TO TAKE A MOMENT TO CHECK?

2 A. IT WOULD TAKE ME MORE THAN A MOMENT.

3 Q. HOW LONG WOULD IT TAKE YOU?

4 A. I'M A FAIRLY SLOW READER, NOT TO TRY TO BE FUNNY.
5 PROBABLY AT LEAST AN HOUR.

6 Q. IT'S APPARENT WE'RE NOT GOING TO CONCLUDE YOUR
7 TESTIMONY TODAY, SO I'LL MOVE ON TO SOME OTHER QUESTIONS.
8 BUT I WOULD LIKE YOU -- AND YOU WILL BE BACK MONDAY MORNING
9 AT 10 A.M. I WOULD LIKE YOU TO CAREFULLY REVIEW THE
10 AGREEMENT, TAKE AS LONG AS YOU LIKE, AND TELL US SO YOU CAN
11 ANSWER AFTER CAREFUL REVIEW WHETHER THERE IS ANYTHING IN
12 THIS 70-PAGE DETAILED AND COMPREHENSIVE AGREEMENT WITH THE
13 CITY THAT EITHER MENTIONS OR IN ANY WAY REFERS TO THE CITY
14 REIMBURSING NORCAL FOR THIS ESTIMATED TWO MILLION A YEAR
15 ADDITIONAL COST RELATING TO CWS' S DECISION TO SWITCH FROM
16 LONGSHOREMEN TO TEAMSTERS. OKAY?

17 A. I'LL DO IT, BUT MY MEMORY IS NOT GOOD ENOUGH.
18 WOULD YOU PLEASE PUT THAT IN WRITING FOR ME?

19 Q. I WILL COMMUNICATE THAT TO YOUR COUNSEL.

- 20 A. THANK YOU.
- 21 Q. WAS IT YOUR UNDERSTANDING THAT THIS AGREEMENT
22 INCORPORATED AND INCLUDED ALL PRIOR AGREEMENTS AND
23 UNDERSTANDINGS BETWEEN NORCAL AND THE CITY OF SAN JOSE?
24 A. I DON'T KNOW.
25 Q. LOOK AT PARAGRAPH 24.24.
26 A. I AM GOING TO GUESS IT SAYS THAT.
27 Q. I DON'T MAKE THAT STUFF UP, MR. SANGIACOMO. I'M
28 JUST TRYING TO GET YOU TO ANSWER THE QUESTION. HAVE YOU

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- 1 LOCATED PARAGRAPH 24.24?
- 2 A. YES, I HAVE.
- 3 Q. IT'S LABELED ENTIRE AGREEMENT, IS IT NOT?
- 4 A. YES, IT IS.
- 5 Q. DOES IT CONTAIN THE FOLLOWING SENTENCE:
6 "THIS AGREEMENT INCORPORATES AND
7 INCLUDES ALL PRIOR NEGOTIATIONS, CORRESPONDENCE,
8 CONVERSATIONS, AGREEMENTS AND UNDERSTANDINGS
9 APPLICABLE TO THE MATTERS CONTAINED IN THE
10 AGREEMENT, AND THE PARTIES AGREE THAT THERE ARE NO
11 COMMITMENTS, AGREEMENTS OR UNDERSTANDINGS
12 CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT
13 THAT ARE NOT CONTAINED IN THIS DOCUMENT."
14 IS THAT WHAT IT SAYS?
15 A. YES.
16 Q. DID YOU SIGN IT?
17 A. YES.

18 Q. AND YOU HAD THE OPPORTUNITY TO HAVE COUNSEL REVIEW
19 IT?

20 A. I BELIEVE SO.

21 Q. AND YOU WERE REPRESENTED BY COUNSEL WHEN YOU SIGNED
22 THIS?

23 A. I BELIEVE SO.

24 Q. OKAY. SO HOW DID YOU DEAL WITH THIS EXPECTATION
25 THAT THE CITY WAS GOING TO REIMBURSE NORCAL FOR TWO MILLION
26 A YEAR ESTIMATED AND SIGN A DOCUMENT THAT SAID NO OTHER
27 PROMISES OR UNDERSTANDINGS COUNT. HOW DID YOU RECONCILE
28 THOSE?

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1 A. I DIDN'T CATCH THE LAST PART.

2 Q. YOU'VE TOLD US TODAY THAT THE MAYOR PROMISED TO TRY
3 TO GET YOU, MAKE YOU WHOLE WITH THIS ESTIMATED TWO MILLION A
4 YEAR ADDITIONAL COST THAT FLOWED FROM CWS SWITCHING FROM
5 LONGSHOREMEN TO THE TEAMSTERS. BUT YOU HAD NO FIRM DEAL;
6 YOU TOLD US THAT, RIGHT?

7 A. YES.

8 Q. YOU TRUSTED THE MAYOR TO BE A MAN OF HIS WORD AND
9 COME THROUGH FOR YOU, RIGHT?

10 A. YES.

11 Q. NOW, HERE IT IS A FEW MONTHS LATER, YOU SIGN A
12 WRITTEN AGREEMENT WITH THE CITY OF SAN JOSE THAT AFFECTED
13 NORCAL'S LEGAL RIGHTS IN THIS MATTER, CORRECT?

14 A. I'M NOT SURE I UNDERSTAND IT THAT WAY.

15 Q. THIS AGREEMENT, DID IT AFFECT NORCAL'S LEGAL RIGHTS

16 WITH THE CITY OVER WHAT PAYMENTS IT WOULD RECEIVE?
17 A. I THINK SO.
18 Q. AND IT CONTAINED AN ENTIRE AGREEMENT CLAUSE.
19 THAT'S NOT SOMETHING YOU THREW INTO THIS AGREEMENT?
20 A. SORRY?
21 Q. LET ME WITHDRAW THAT QUESTION. HOW MANY CONTRACTS
22 DO YOU THINK YOU'VE SIGNED IN YOUR CAREER?
23 A. I HAVE NO IDEA.
24 Q. HUNDREDS?
25 A. POSSIBLY.
26 Q. THIS CLAUSE, THIS ENTIRE AGREEMENT CLAUSE, IT SAYS
27 WHAT'S IN THE CONTRACT COUNTS, ANYTHING ELSE DOESN'T COUNT.
28 THAT'S ESSENTIALLY WHAT THE AGREEMENT SAYS, RIGHT?

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1 A. IT MAY, I DON'T THINK I'M QUALIFIED TO INTERPRET
2 THE LEGAL --
3 Q. LET'S USE THE VERBIAGE IN HERE. IT SAYS:
4 "THE AGREEMENT INCORPORATES AND INCLUDES
5 ALL PRIOR NEGOTIATIONS, CORRESPONDENCE,
6 CONVERSATIONS, AGREEMENTS AND UNDERSTANDINGS
7 APPLICABLE TO THE MATTERS CONTAINED IN THE
8 AGREEMENT, AND THE PARTIES AGREE THAT THERE ARE NO
9 COMMITMENTS, AGREEMENTS OR UNDERSTANDINGS
10 CONCERNING THE SUBJECT MATTER OF THE AGREEMENT
11 THAT ARE NOT CONTAINED IN THIS DOCUMENT."
12 THAT'S WHAT IT SAYS, RIGHT?
13 A. THAT'S WHAT IT SAYS.

14 Q. YEAH. WEREN'T YOU CONCERNED ABOUT SIGNING AN
15 AGREEMENT LIKE THIS THAT THE CITY MIGHT TAKE A POSITION
16 REGARDLESS OF WHAT THE MAYOR SAID, IT AIN'T IN WRITING, IT'S
17 NOT IN THE CONTRACT WE HAVE, WE DON'T HAVE TO PAY IT?

18 A. I DON'T RECALL IF THAT OCCURRED TO ME OR NOT.

19 Q. IS THERE ANYTHING IN THIS AGREEMENT THAT OBLIGATES
20 THE CITY TO PAY THE EXTRA COST ASSOCIATED WITH CWS USING
21 TEAMSTERS INSTEAD OF LONGSHOREMEN?

22 A. I DON'T BELIEVE THERE IS, BUT AGAIN WITHOUT
23 REVIEWING IT, I'M NOT SURE.

24 Q. YOU'LL CHECK OVER THE WEEKEND. IS THERE ANYTHING
25 IN THE AGREEMENT THAT IN ANY WAY REFERS TO YOUR
26 UNDERSTANDING WITH THE MAYOR?

27 A. I ANSWER THAT THE SAME AS THE LAST QUESTION. I'M
28 NOT SURE.

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1 Q. BASED ON THIS WRITTEN AGREEMENT, WAS NORCAL SOLELY
2 RESPONSIBLE FOR PAYING CWS THE EXTRA COST ASSOCIATED WITH
3 THE CWS USING TEAMSTERS INSTEAD OF LONGSHOREMEN?

4 A. WOULD YOU REPEAT THAT, PLEASE.

5 Q. BASED ON THIS 70-PAGE AGREEMENT WITH THE CITY, WAS
6 NORCAL SOLELY RESPONSIBLE FOR PAYING CWS FOR THE EXTRA COSTS
7 ASSOCIATED WITH CWS USING TEAMSTERS INSTEAD OF LONGSHOREMEN?

8 A. WITHOUT REVIEWING IT, I'M NOT SURE I CAN ANSWER
9 THAT.

10 Q. WHY DON'T YOU LOOK AT SECTION 24.11 ON PAGE 65 OF
11 THE AGREEMENT. DO YOU SEE STARTING AT LINE 8, ANY

12 COMPENSATION DUE OR PAYABLE TO THE CONTRACTOR,
13 SUBCONTRACTORS SHALL BE THE SOLE RESPONSIBILITY OF THE
14 CONTRACTOR?

15 A. I SEE THAT.

16 Q. SO DOESN' T THAT MEAN THAT UNDER THIS AGREEMENT THE
17 CITY IS NOT RESPONSIBLE FOR REIMBURSING NORCAL FOR THE MONEY
18 OWED TO CWS, ITS SUBCONTRACTOR?

19 A. I DON' T FEEL QUALIFIED TO MAKE THAT LEGAL
20 CONCLUSION.

21 Q. WHAT DID YOU MAKE OF THIS LANGUAGE IN THE CONTRACT,
22 DID YOU READ THE CONTRACT BEFORE YOU SIGNED IT?

23 A. I THINK I DID, TODAY I DON' T REMEMBER.

24 Q. TO YOUR KNOWLEDGE DURING THE THREE AND A HALF
25 MONTHS BETWEEN DECEMBER OF 2000 AND MARCH 27TH, WAS IT?

26 A. I THINK SO.

27 Q. OF 2001, DID ANYONE FROM NORCAL BRING UP WITH THE
28 CITY NEGOTIATORS WHO WORKED ON THIS CONTRACT THE QUESTION OF

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1 NORCAL BEING REIMBURSED FOR THE EXTRA COST ASSOCIATED WITH
2 CWS USING TEAMSTERS?

3 A. I DON' T KNOW IF I EVER KNEW. I DON' T REMEMBER.

4 Q. DID NORCAL COMMENCE OPERATIONS UNDER THIS AGREEMENT
5 WITH THE CITY OF SAN JOSE ON JULY 1, 2002?

6 A. I BELIEVE THAT' S THE CORRECT DATE, YES.

7 Q. WHEN DID NORCAL FIRST BEGIN MAKING PAYMENTS TO CWS
8 FOR THE EXTRA COST OF USING TEAMSTERS AT THE CWS RECYCLING
9 FACILITY?

- 10 A. I DON'T RECALL.
- 11 Q. DID THE PAYMENTS COMMENCE RIGHT AWAY, OR WAS THERE
12 A PERIOD OF TIME BEFORE NORCAL STARTED TO MAKE PAYMENTS TO
13 CWS?
- 14 A. SOME TIME WENT BY, I DON'T KNOW HOW MUCH.
- 15 Q. NOW, JUST LAST YEAR IN '05 YOU WENT TO AN
16 ARBITRATION WITH CWS; ISN'T THAT TRUE?
- 17 A. YES.
- 18 Q. DID YOU TESTIFY UNDER OATH?
- 19 A. YES.
- 20 Q. BEFORE THAT, WERE YOU DEPOSED UNDER OATH?
- 21 A. YES.
- 22 Q. DID THE SUBJECT OF NORCAL'S PAYMENTS TO CWS, WAS
23 THAT AN ISSUE IN THE ARBITRATION?
- 24 A. I DON'T THINK IT WAS.
- 25 Q. WHAT WAS THE ISSUE IN THE ARBITRATION?
- 26 A. THERE WERE SEVERAL ISSUES. ONE RELATING TO THE
27 SAN JOSE SUBCONTRACT, WHETHER CWS WAS ENTITLED TO ADDITIONAL
28 COST RECOVERY, BECAUSE THERE WAS A PROVISION IN THE

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1 SUBCONTRACT THAT SAID MATERIAL DELIVERED TO CWS COULD
2 CONTAIN NO MORE THAN 10 PERCENT RESIDUAL WASTE. THAT WAS
3 THEIR LARGEST CLAIM. AND THAT IS THE ONE ISSUE WHERE THE
4 ARBITRATOR CAME DOWN ON THEIR SIDE, BECAUSE THEY WERE
5 THROWING AWAY MORE THAN 10 PERCENT OF THE MATERIAL DELIVERED
6 TO THEM.

7 THERE WAS A SECOND ISSUE RELATING TO, I BELIEVE IT

8 WAS TRANSPORTATION, CWS WAS NOT, THEIR FACILITY WAS NOT
9 READY, WAS NOT OPEN ON JULY FIRST OF 2002. SO MATERIAL WAS
10 WHAT WE CALL TRANS-SHIPPED FROM SAN JOSE TO THEIR PLANT IN
11 OAKLAND TO PROCESS FOR SOMETHING LIKE SIX OR EIGHT WEEKS, I
12 DON'T REMEMBER THE EXACT TIME FRAME, AND THE MATERIAL WAS
13 TRANS-SHIPPED IN OUR VEHICLES WITH OUR EMPLOYEES, AND WE
14 MADE A CLAIM FOR THAT ADDITIONAL COST.

15 THEN THE THIRD ISSUE OF THE ARBITRATION WAS THERE
16 WAS A SECOND CONTRACT, THAT WE HAD AGREED WITH CWS TO BRING
17 MATERIAL FROM OTHER COMMUNITIES IN SANTA CLARA COUNTY THAT
18 WE WOULD PICK UP FOR PROCESSING. AND THAT CONTRACT WAS, I'M
19 NOT SURE WHAT THE RIGHT LEGAL WORD, I THINK IT WAS VOIDED
20 BECAUSE THEY DIDN'T HAVE A FACILITY READY, FOR THE CONTRACT
21 REQUIRED THEM TO BE OPEN, AND WE WON THE ARBITRATION ON THAT
22 ISSUE.

23 Q. OKAY.

24 A. THOSE WERE THE MAIN THINGS IN THE ARBITRATION.

25 Q. AND DID ANY KIND OF ACCOUNTINGS REGARDING CWS'S
26 OBLIGATION UNDER THIS ADDENDUM WE HAVE BEEN TALKING ABOUT,
27 THE OCTOBER 9TH ADDENDUM, DID THAT GO INTO THE MIX OF ISSUES
28 THAT HAD TO BE RESOLVED TO OFFSET SOMEBODY'S CLAIM?

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1 A. IN THE ARBITRATION?

2 Q. NO.

3 A. NO. I BELIEVE THAT WAS RESOLVED IN ADVANCE OF THE
4 ARBITRATION.

5 Q. IS THERE SOMEONE OTHER THAN YOURSELF AT NORCAL WHO
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6 WOULD BE MORE KNOWLEDGEABLE ABOUT WHEN NORCAL STARTED PAYING
7 CWS THE EXTRA PAYMENTS SPECIFIED IN THE ADDENDUM TO THE
8 NORCAL CWS SUBCONTRACT?

9 A. YES.

10 Q. WHO?

11 A. I WOULD SUGGEST MARK LOMELE, OUR CHIEF FINANCIAL
12 OFFICER.

13 Q. WAS HE EMPLOYED AT THE TIME IN 2002?

14 A. YES, HE WAS.

15 Q. OKAY. AFTER THE AGREEMENT WAS SIGNED ON MARCH 27,
16 2001, AND NORCAL COMMENCED OPERATIONS IN JULY OF '02, WHAT
17 DID NORCAL DO, IF ANYTHING, TO SEEK REIMBURSEMENT FROM THE
18 CITY FOR THE EXTRA COST ASSOCIATED WITH CWS USING TEAMSTERS
19 INSTEAD OF LONGSHOREMEN?

20 A. BETWEEN MARCH OF 2001 AND JULY OF 2002 --

21 Q. LET ME BREAK IT DOWN. THE EXTRA COST DIDN'T
22 ACTUALLY KICK IN BEFORE OPERATIONS COMMENCED IN JULY OF '02,
23 RIGHT?

24 A. THAT'S CORRECT.

25 Q. SO I TAKE IT THERE WAS NO NEED TO SEEK
26 REIMBURSEMENT FROM THE CITY PRIOR TO JULY OF 2002, BECAUSE
27 THERE WAS NO EXTRA COST BEING PAID OUT AT THAT TIME, RIGHT?

28 A. THE ONLY THING, THERE MAY HAVE BEEN A DISCUSSION

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1 WITH THE CITY, SOMEONE AT THE CITY DURING THAT TIME FRAME
2 ABOUT THE NEED TO PUT SOMETHING IN PLACE.

3 Q. AND WHO WOULD THAT DISCUSSION HAVE INVOLVED? WHO

4 FROM THE CITY AND WHO FROM NORCAL?

5 A. I BELIEVE FROM NORCAL IT WAS AT THAT POINT PROBABLY
6 BILL JONES, AND I BELIEVE FROM THE CITY, I SEEM TO REMEMBER
7 JOE GUERRA.

8 Q. NOW, AFTER OPERATIONS COMMENCED IN SAN JOSE, JULY
9 OF '02, DID NORCAL DO ANYTHING TO SEEK REIMBURSEMENT FROM
10 THE CITY FOR THE COSTS OF CWS USING TEAMSTERS?

11 A. I MISSED THE LAST COUPLE OF WORDS.

12 Q. AFTER NORCAL COMMENCED OPERATION IN JULY OF '02 IN
13 SAN JOSE, DID NORCAL DO ANYTHING TO SEEK REIMBURSEMENT FROM
14 THE CITY FOR THE EXTRA COST OF CWS USING TEAMSTERS INSTEAD
15 OF LONGSHOREMEN?

16 A. AFTER JULY OF 2002?

17 Q. YES.

18 A. YES.

19 Q. WHAT DID NORCAL DO?

20 A. WE WERE IN CONTACT OFF AND ON WITH THE MAYOR'S
21 OFFICE, PARTICULARLY JOE GUERRA, TO TALK ABOUT WHEN WE COULD
22 GET THE REIMBURSEMENT.

23 Q. AND WHO FROM NORCAL WOULD HAVE BEEN IN CONTACT WITH
24 MR. GUERRA?

25 A. MOST OF THE TIME IT WOULD HAVE BEEN BILL JONES
26 UNTIL HE LEFT US.

27 Q. WHEN DID BILL JONES LEAVE?

28 A. I THINK IT WAS SOMETIME IN 2003.

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1 Q. AND DID HE LEAVE UNDER GOOD TERMS?

2 A. HE SUBMITTED A RESIGNATION. IT KIND OF SURPRISED
3 US, IT SURPRISED ME. I DIDN'T EXPECT THAT TO HAPPEN.

4 Q. IT WASN'T NORCAL DESIRING THAT HE LEAVE?

5 A. NO, IT WAS NOT. AND I GUESS MORE THE ANSWER, AFTER
6 HE LEFT, THE PRIMARY RESPONSIBILITY PROBABLY WOULD HAVE BEEN
7 WITH JOHN NICOLETTI, BUT I ALSO HAD OVER A MATTER OF A
8 COUPLE YEARS I PARTICIPATED IN AT LEAST A COUPLE OF MEETING
9 WITH GUERRA.

10 Q. OBVIOUSLY, WE'RE GOING TO HAVE TO TALK TO
11 JOHN NICOLETTI AND MR. JONES TO HEAR FIRST HAND WHAT THEY
12 HAVE TO SAY. SO COULD YOU SHARE WITH US WHAT YOU KNOW FIRST
13 HAND ABOUT WHO YOU CONTACTED IN THE CITY ABOUT GETTING
14 NORCAL REIMBURSED THIS ESTIMATED TWO MILLION A YEAR, AND
15 TELL US WHAT HAPPENED.

16 A. THE CONTACTS WOULD HAVE BEEN MADE EITHER BY JONES
17 OR NICOLETTI, NOT BY ME.

18 Q. DID YOU HAVE ANY DISCUSSIONS WITH ANYONE AT THE
19 CITY CONCERNING NORCAL GETTING REIMBURSED THIS ESTIMATED TWO
20 MILLION A YEAR?

21 A. YEAH, I PARTICIPATED IN AT LEAST A COUPLE OF
22 DISCUSSIONS WITH JOE GUERRA.

23 Q. DID ANY OF THOSE INVOLVE THE MAYOR?

24 A. I DON'T BELIEVE SO.

25 Q. WHAT YEAR WERE THOSE DISCUSSIONS?

26 A. I'M NOT SURE.

27 MR. FINKELSTEIN: WE'RE GOING TO LOCATE A
28 DOCUMENT. JUST BEAR WITH US.

1 BY MR. FINKELSTEIN:

2 Q. I WOULD LIKE YOU TO TAKE A LOOK AT EXHIBIT 48, IF
3 YOU WOULD. HAVE YOU SEEN THIS DOCUMENT BEFORE?

4 A. I BELIEVE SO.

5 Q. WHAT IS IT?

6 A. IT'S AN AMENDMENT TO THE SUBCONTRACT WITH CWS.

7 Q. AND WHAT WAS THE DATE OF THAT AMENDMENT?

8 A. DATED MARCH 11, 2004.

9 Q. OKAY. AND WHAT IS THE PURPOSE OF THIS AMENDMENT?

10 A. I NEED SOME TIME TO REVIEW IT, I DON'T REMEMBER.

11 Q. TAKE A LOOK AT IT. HAVE YOU HAD A CHANCE TO REVIEW
12 IT?

13 A. I'VE SKIMMED IT, YES.

14 Q. WHAT IS THE PURPOSE OF THIS DOCUMENT?

15 A. IT SETS FORTH AN UNDERSTANDING OF HOW THE PAYMENTS
16 TO CWS FOR THE ADDITIONAL COSTS WOULD BE DISTRIBUTED TO
17 THEM.

18 Q. THAT'S BECAUSE AS LATE AS MARCH OF 2004 NORCAL HAD
19 NOT BEEN MAKING THE PAYMENTS CALLED FOR IN THE FIRST
20 AMENDMENT, TRUE?

21 A. I'M NOT SURE IT'S 100 PERCENT TRUE.

22 Q. WHAT PERCENTAGE TRUE IS IT?

23 A. I THINK WE HAD MADE SOME PAYMENTS BY THAT DATE.

24 Q. BUT NOT THE WHOLE PAYMENTS?

25 A. I DON'T REMEMBER.

26 Q. WOULD NORCAL HAVE ANY REASON NOT TO MAKE THE FULL
27 PAYMENTS IT WAS OBLIGATED TO MAKE UNDER THE FIRST AMENDMENT
28 AT THAT TIME?

1 A. I'M SURE WE COULD HAVE COME UP WITH SOME ARGUMENTS,
2 NOT TRYING TO BE FACETIOUS. I DON'T REMEMBER WHAT WE PAID
3 AND WHEN WE DID MAKE THE FULL PAYMENTS.

4 Q. WHY DIDN'T NORCAL JUST HONOR ITS OBLIGATION TO CWS
5 AND THE ADDENDUM IN JULY 1, '02 AND START MAKING THE
6 PAYMENTS? WHAT WAS THE PROBLEM?

7 A. I DON'T REMEMBER EVERYTHING THAT HAPPENED, BUT
8 EARLIER BACK IN JULY OF 2002, CWS DIDN'T EVEN HAVE AN
9 AGREEMENT IN PLACE WITH THE TEAMSTERS.

10 Q. OKAY.

11 A. SO THERE IS A QUESTION AS TO WHAT THE AMOUNT WAS
12 GOING TO BE. THEN AT SOME POINT THEY STARTED PAYING THEIR
13 WORKERS AT THE WAGE RATES THAT WERE IN EFFECT IN THE PRIOR
14 CONTRACTOR'S UNION COLLECTIVE BARGAINING AGREEMENT.

15 Q. THE TEAMSTER WAGES?

16 A. YES. AND AT SOME POINT THEY FINALLY ENTERED INTO
17 AN AGREEMENT WITH THE TEAMSTERS THAT SET OUT SOME DIFFERENT
18 NUMBERS.

19 Q. AND WHERE IN THIS SCENARIO DID NORCAL START MAKING
20 PAYMENTS TO CWS?

21 A. I DON'T REMEMBER THAT.

22 Q. WHO SIGNED THIS DOCUMENT ON BEHALF OF NORCAL?

23 A. I DID.

24 Q. BY THE WAY, THIS AGREEMENT, WHO DRAFTED THIS
25 AGREEMENT?

26 A. I DON'T KNOW.

27 Q. BY THE WAY, THIS AGREEMENT ON PAGE 4 HAS SOME
28 LANGUAGE THAT ONCE AGAIN TALKS ABOUT THE WRITTEN, ABOUT THE

1 ENTIRE AGREEMENT, CORRECT?

2 A. LOOKS LIKE IT.

3 Q. THAT'S PRETTY STANDARD LANGUAGE IN AGREEMENTS, IS
4 IT NOT?

5 A. AT LEAST THE TWO IT'S IN.

6 Q. I BET IT'S IN EVERY AGREEMENT THAT NORCAL SIGNED;
7 WOULD I BE WRONG?

8 A. I DON'T KNOW.

9 Q. THE WHOLE IDEA OF AN AGREEMENT CLAUSE IS TO PREVENT
10 SOMEONE, WHEN YOU SIGN AN AGREEMENT YOU WANT TO SETTLE
11 WHATEVER THE DISPUTE IS, CORRECT, THAT'S WHY YOU SIGN AN
12 AGREEMENT?

13 A. YOU SIGN AN AGREEMENT NOT NECESSARILY TO RESOLVE A
14 DISPUTE.

15 Q. BUT YOU WANT TO RESOLVE THE RIGHTS AND OBLIGATIONS
16 OF THE PARTIES IN THE AGREEMENT, CORRECT?

17 A. IT WOULD DO THAT.

18 Q. YOU DON'T WANT TO COME BACK AFTER A WRITTEN
19 AGREEMENT IS SIGNED SAYING I SIGNED THE AGREEMENT BUT WE HAD
20 THIS CONVERSATION OVER HERE, OVER THERE OR WHATEVER, AND
21 THAT MODIFIES THIS WRITTEN AGREEMENT. WE WANT IT ALL TO BE
22 WRITTEN DOWN IN ONE PLACE, THAT'S THE FOUR CORNERS OF THE
23 DOCUMENT. THAT'S THE CONCEPT HERE, RIGHT?

24 A. THAT IS THE IDEA, AND THAT WOULD BE NICE.

25 Q. OKAY. SO I TAKE IT REGARDLESS OF THE STATE OF YOUR
26 RECOLLECTION TODAY, YOU'RE NOT SURPRISED THAT THE 70-PAGE

27 AGREEMENT WITH THE CITY HAD THAT AGREEMENT CLAUSE IN IT, ARE
28 YOU?

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1 A. AGAIN, I THINK THAT'S A LEGAL QUESTION. I JUST AM
2 NOT AN EXPERT ON LEGAL MATTERS.

3 Q. SO WHAT IS YOUR BEST UNDERSTANDING OF WHAT WAS
4 BEING RESOLVED BY THE SECOND AMENDMENT TO THE SUBCONTRACT?

5 A. I THINK WHAT IT WAS DOING WAS SPELLING OUT WHAT
6 AMOUNTS OF MONEY CWS WAS ENTITLED TO FROM NORCAL AND HOW
7 THEY WOULD BE PAID.

8 Q. DOES THAT NOW REFRESH YOUR RECOLLECTION THAT NORCAL
9 DID NOT COMMENCE IMMEDIATELY PAYING CWS THE EXTRA MONEY DUE
10 TO ITS SIGNING WITH THE TEAMSTERS?

11 A. WOULD YOU PLEASE REPEAT THAT?

12 Q. YEAH. HAVING LOOKED AT THIS SECOND AMENDMENT, DO
13 YOU NOW RECOLLECT SOMETHING THAT I ASKED YOU ABOUT A FEW
14 QUESTIONS EARLIER, THAT NORCAL DID NOT START PAYING CWS THE
15 FULL AMOUNT OWED FOR THE TEAMSTERS SIGNING ON DAY ONE OF THE
16 OPERATION STARTING, RIGHT?

17 A. WE DIDN'T PAY THEM ANYTHING INITIALLY.

18 Q. BECAUSE THEY DIDN'T HAVE THE RECYCLING SET UP.

19 A. WE BEGAN PAYING THEM SOME AMOUNT AT A LATER DATE.
20 AND I BELIEVE SOMETIME AFTER THIS DOCUMENT WAS SIGNED, WE
21 BEGAN PAYING THEM CLOSER TO THE FULL AMOUNT THAT THEY
22 CLAIMED.

23 Q. OKAY. DID NORCAL EVENTUALLY AMEND ITS AGREEMENT
24 WITH THE CITY OF SAN JOSE TO INCLUDE ADDITIONAL PAYMENTS TO

25 NORCAL?

26 A. YES, WE DID.

27 Q. DO YOU REMEMBER WHEN THAT WAS?

28 A. I THINK IT WAS SOMETIME IN THE LATTER PART OF 2004,

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1 BUT THAT'S THE BEST GUESS.

2 Q. WHY DON'T YOU TAKE A LOOK AT EXHIBIT 60, PLEASE.
3 TELL US IF YOU RECOGNIZE THAT DOCUMENT. HAVE YOU SEEN THIS
4 DOCUMENT BEFORE?

5 A. YES.

6 Q. WHAT IS IT?

7 A. IT'S AN AMENDMENT TO THE AGREEMENT BETWEEN NORCAL
8 AND THE CITY OF SAN JOSE THAT AMENDED THE RECYCLE PLUS
9 AGREEMENT.

10 Q. IF YOU LOOK AT THE SIGNATURE PAGE OF THE DOCUMENT,
11 IS THAT YOUR SIGNATURE?

12 A. YES, ABOVE MY PRINTED NAME, YES.

13 Q. DID YOU SIGN THIS ON OR ABOUT DECEMBER 10 OF 2004?

14 A. I BELIEVE SO.

15 Q. ARE THE ADDITIONAL PAYMENTS TO COVER THE EXTRA
16 COSTS ASSOCIATED WITH CWS SIGNING WITH THE TEAMSTERS
17 DESCRIBED AT PAGE FOUR OF EXHIBIT 1 TO THIS DOCUMENT?

18 A. COULD YOU REPEAT THE QUESTION?

19 Q. YEAH. IS THERE A SCHEDULE THAT CONSTITUTES A PART
20 OF THIS AGREEMENT THAT SETS FORTH THE ADDITIONAL PAYMENTS
21 THAT THE CITY OF SAN JOSE WAS MAKING TO NORCAL PURSUANT TO
22 THIS AMENDMENT?

23 A. YES. YES, THIS IS IT.
24 Q. AND IS THAT SCHEDULE FOUND AT PAGE FOUR OF EXHIBIT
25 1 TO THIS AMENDMENT?
26 A. YES.
27 Q. OKAY. AND THERE'S AN INITIAL PAYMENT IN
28 DECEMBER '04 OF \$925,000, CORRECT?

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1 A. THERE IS, YES.
2 Q. THEN MONTHLY THEREAFTER JANUARY THROUGH MAY OF '05,
3 AN ADDITIONAL 925,000 PER MONTH TO NORCAL FROM THE CITY?
4 A. YES.
5 Q. AND THEN IN JUNE OF '05, THERE'S A 900,000 PAYMENT,
6 CORRECT?
7 A. YES.
8 Q. THOSE \$900,000 PLUS PAYMENTS ARE TO TAKE CARE OF
9 THE RETROACTIVE PREAMENDMENT COSTS THAT CWS AND NORCAL HAD
10 AS A RESULT OF CWS SIGNING WITH THE TEAMSTERS, CORRECT?
11 A. THEY, THE \$900,000 AMOUNTS REPRESENTED THE
12 RETROACTIVE PORTION OF THAT.
13 Q. AND FOLLOWING THAT THERE ARE MONTHLY PAYMENTS OF
14 200,000, THOSE ARE THE GOING FORWARD COSTS OF THE DIFFERENCE
15 BETWEEN LONGSHOREMEN AND TEAMSTERS.
16 A. APPROXIMATELY.
17 Q. APPROXIMATELY.
18 A. THAT WAS THE BASIS ON WHICH THE CITY NEEDED TO MAKE
19 THE PAYMENTS.
20 Q. OKAY. NOW, THIS TOTALS UP TO WHAT, 11 AND A HALF

21 MILLION DOLLAR, DOES IT?

22 A. IT SHOULD COME TO 11.25 MILLION, IF I REMEMBER
23 CORRECTLY.

24 Q. WELL, I'M NOT AN ACCOUNTANT, BUT LOOKING AT THIS
25 SCHEDULE, IS THERE ANOTHER PAGE ON THE SCHEDULE I DON'T
26 HAVE? LOOKING AT THIS SCHEDULE, YOU'LL NOTICE THAT THEY ARE
27 ALL ROUND NUMBERS EXCEPT THE EARLY PAYMENTS WHICH END IN
28 25,000.

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1 A. YES.

2 Q. AND THERE ARE SIX 25,000 PORTIONS OF THESE \$900,000
3 PAYMENTS RIGHT?

4 A. YES.

5 Q. THAT'S GOING TO BE ENDING IN 50,000 NOT 25,000,
6 RIGHT?

7 A. RIGHT. 11,250,000.

8 Q. OH, I'M SORRY.

9 A. I THOUGHT YOU SAID 11 AND A HALF.

10 Q. I DID. IT'S 11 AND A QUARTER MILLION DOLLARS?

11 A. YES.

12 Q. NOW, IT WAS YOUR UNDERSTANDING AND THE CITY'S
13 UNDERSTANDING THAT THESE EXTRA SUMS, THIS 11 AND A QUARTER
14 MILLION, \$11,250,000.00 WERE FOR THE EXTRA WAGE AND BENEFIT
15 COSTS THAT CWS HAD TO PAY BECAUSE OF SWITCHING FROM
16 LONGSHOREMEN TO TEAMSTERS, CORRECT?

17 A. MY UNDERSTANDING.

18 Q. YES. AND IN THE DOCUMENT IS THERE A SECTION OF THE

19 DOCUMENT THAT REFLECTS WHAT CONSIDERATION NORCAL WAS GIVING
20 TO THE CITY FOR THIS 11 AND A QUARTER MILLION IN EXTRA
21 PAYMENTS?

22 A. THERE IS SOME PROVISION FOR ADDITIONAL SERVICES.

23 Q. I'M SORRY?

24 A. THERE IS SOME PROVISION IN THIS AGREEMENT THAT
25 ADDITIONAL SERVICES BE PROVIDED.

26 Q. AS A MATTER OF FACT, THE ONLY CONSIDERATION
27 REFLECTED IN THIS SECOND AMENDMENT TO THE AGREEMENT IS SOME
28 ADDITIONAL NEIGHBORHOOD CLEANUP BINS AND MATERIALS

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1 COMPOSITION STUDY AND AN EWASTE PROGRAM, ELECTRONIC SCRAP
2 PROGRAM, CORRECT?

3 A. I THINK THAT'S CORRECT. THAT'S ALL I SEE.

4 Q. THERE'S NOTHING, IS THERE ANYTHING IN THIS
5 AGREEMENT THAT DISCUSSES EXTRA COSTS ASSOCIATED WITH THE
6 TEAMSTERS?

7 A. UH -- I'M NOT SURE BUT -- I DON'T REMEMBER SEEING
8 ANYTHING.

9 Q. I'M SORRY?

10 A. I DON'T REMEMBER SEEING ANYTHING.

11 Q. WHAT WOULD YOU ESTIMATE THE ADDITIONAL COST TO
12 NORCAL WAS FOR THESE ADDITIONAL NEIGHBORHOOD CLEANUP BINS,
13 THE \$100,000 MATERIALS COMPOSITION STUDY AND THIS ELECTRONIC
14 SCRAP PROGRAM?

15 A. I DON'T HAVE A REAL GOOD HANDLE ON IT. I COULDN'T
16 GIVE YOU AN ESTIMATE, IT WAS PROBABLY NO MORE THAN A HALF

17 MILLION DOLLARS.

18 Q. SO BASED ON THE FOUR CORNERS OF THIS DOCUMENT, THE
19 CITY PAID 11 AND A QUARTER MILLION DOLLARS FOR A HALF
20 MILLION IN ADDITIONAL SERVICES FROM NORCAL; IS THAT WHAT
21 THIS DOCUMENT SAYS?

22 A. THE CITY AGREED TO PAY 11 AND A QUARTER MILLION
23 DOLLARS, AND FOR THAT THEY GOT SOME ADDITIONAL SERVICES.

24 Q. THOSE SERVICES, BALLPARK ESTIMATE, HALF MILLION
25 DOLLARS?

26 A. THAT'S A ROUGH GUESS, YES.

27 Q. BUT THIS WASN'T WHAT WAS REALLY GOING ON HERE, WAS
28 IT?

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1 A. I'M SORRY?

2 Q. THAT WASN'T WHAT WAS REALLY GOING ON HERE, WAS IT?

3 A. THE BULK OF THIS AGREEMENT WAS DESIGNED TO
4 REIMBURSE US FOR THE ADDITIONAL COSTS.

5 Q. ADDITIONAL LABOR COSTS?

6 A. YES, TEAMSTERS.

7 Q. IS THAT, IS THERE A REASON WHY THAT'S NOT DISCLOSED
8 IN THIS AGREEMENT?

9 A. I DON'T KNOW WHAT THE REASON WAS IT WASN'T IN
10 THERE.

11 Q. YOU SIGNED THE AGREEMENT, RIGHT?

12 A. YES.

13 Q. DID YOU EVER ASK WHO NEGOTIATED THE AGREEMENT ON
14 BEHALF OF NORCAL WITH THE CITY?

15 A. I BELIEVE OUR ATTORNEY.
16 Q. WHICH ATTORNEY?
17 A. MIKE BAKER.
18 Q. OKAY. YOU REVIEWED IT BEFORE SIGNING?
19 A. I BELIEVE SO.
20 Q. YOUR POSITION PUBLICALLY IN THE OP-ED PIECE AND
21 ELSEWHERE ON YOUR WEBSITE SINCE THIS CONTROVERSY HAS ARISEN
22 HAS BEEN THAT THERE WAS NO BACK ROOM DEAL, AND DISCUSSIONS
23 WITH THE MAYOR WERE OPEN AND ABOVEBOARD, CORRECT?
24 A. YES.
25 Q. SO WHEN YOU REVIEWED THIS SHORT DOCUMENT REGARDING
26 THE PAYMENT FOR THE EXTRA LABOR COSTS, DID YOU STOP AND SAY,
27 WELL, WAIT A MINUTE, WE NEED TO PUT IN THE REAL
28 CONSIDERATION HERE, WHICH IS THE EXTRA LABOR COST. DID YOU

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1 DO THAT?
2 A. NO.
3 Q. WHY NOT?
4 A. I DIDN'T GET INVOLVED IN THE DRAFTING OF THIS
5 AGREEMENT.
6 Q. BUT YOU HAD THE FINAL SAY ON WHETHER TO SIGN THE
7 AGREEMENT?
8 A. YES.
9 Q. AND YOU KNEW WHAT THE AGREEMENT WAS REALLY ABOUT,
10 RIGHT, IT WASN'T ABOUT A HUNDRED THOUSAND DOLLAR MATERIALS
11 COMPOSITION STUDY OR TEN MORE NEIGHBORHOOD CLEANUP BINS OR
12 E-SCRAP PROGRAM. THE REAL CONSIDERATION WAS TO REIMBURSE

13 NORCAL FOR EXTRA LABOR COSTS, RIGHT?
14 A. THAT IS MY UNDERSTANDING.
15 Q. WHY ISN'T THAT REFLECTED IN THE AGREEMENT?
16 A. I DON'T KNOW.
17 Q. WHY DON'T -- WE HAVE SOME OTHER MATTERS TO TAKE UP
18 BEFORE WE RECESS SO, MR. SANGIACOMO, I'LL LET YOU GO FOR
19 TONIGHT. WE'LL SEE YOU HERE AT 10:00 A.M. NEXT MONDAY.
20 A. SURE.
21 THE FOREMAN: LET ME REITERATE THE ADMONITION.
22 THE WITNESS: SURE.
23 (COURT WAS ADJOURNED FOR THE DAY.)
24
25
26
27
28

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1 SAN JOSE, CALIFORNIA
2 MARCH 6, 2006.
3
4 PROCEEDINGS:
5 (ROLL WAS TAKEN BY THE FOREMAN.)
6 MR. FINKELSTEIN: WE'LL ASK MR. SANGIACOMO TO STEP
7 IN.
8 GOOD MORNING, MR. SANGIACOMO. I'LL REMIND YOU
9 YOU'RE STILL UNDER OATH. DO YOU UNDERSTAND THAT?
10 THE WITNESS: I UNDERSTAND.

11 MICHAEL SANGIACOMO,
12 HAVING BEEN PREVIOUSLY SWORN, TESTIFIED ON HIS OATH AS
13 FOLLOWS:

14 EXAMINATION, CONTINUED:

15 BY MR. FINKELSTEIN:

16 Q. DID YOU TESTIFY LAST WEEK THAT AS A RESULT OF THE
17 OCTOBER 6, 2000 MEETING YOU HAD WITH MAYOR GONZALES AT CITY
18 HALL YOU FELT THAT THE MAYOR WAS APPLYING POLITICAL PRESSURE
19 TO NORCAL TO GET NORCAL TO GET CWS TO USE TEAMSTERS INSTEAD
20 OF ILWU WORKERS?

21 A. I BELIEVE I DID SAY THAT, YES.

22 Q. AFTER YOUR OCTOBER 6, 2000 MEETING WITH THE MAYOR
23 AT CITY HALL, WAS IT YOUR BELIEF THAT GETTING CWS TO USE
24 TEAMSTERS INSTEAD OF ILWU WORKERS WAS A REQUIREMENT FOR
25 NORCAL GETTING THE CITY TO APPROVE ITS PROPOSAL?

26 A. I DON'T THINK WE KNEW, BUT I THINK IF I REMEMBER
27 CORRECTLY, WE FELT THAT IF THEY WERE WILLING TO DO THAT, IT
28 COULDN'T HURT, IT MIGHT HELP.

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1 Q. SO YOUR TESTIMONY IS THAT YOU DIDN'T CONSTRUE WHAT
2 THE MAYOR TOLD YOU IN THAT MEETING ON OCTOBER 6, 2000 AS
3 IMPOSING SOME REQUIREMENT ON NORCAL TO GET CWS TO SIGN WITH
4 THE TEAMSTERS IN ORDER TO GET THE CONTRACT?

5 A. I DON'T THINK WE EVER CONCLUDED IT WAS A
6 REQUIREMENT, BUT IT WAS CERTAINLY SOMETHING THAT THE MAYOR
7 WANTED.

8 Q. I GUESS MY QUESTION TO YOU IS YOU DID NOT CONSTRUE

9 WHAT THE MAYOR WAS TELLING YOU AT THE OCTOBER 6, 2000
10 MEETING AS A REQUIREMENT FOR NORCAL TO GET THE CONTRACT?

11 A. I DON'T REMEMBER IT THAT WAY, NO.

12 Q. DID YOU CONSTRUE WHATEVER IT IS THAT THE MAYOR TOLD
13 YOU ON OCTOBER 6, 2000 AS THE CITY REQUIRING CWS TO SIGN
14 WITH THE TEAMSTERS?

15 A. NO.

16 Q. OKAY.

17 MR. FINKELSTEIN: CAN WE SEE EXHIBIT 15, PLEASE?

18 Q. SHOWING YOU EXHIBIT 15 -- I THINK WE SHOWED YOU
19 THIS LAST WEEK. THIS IS THE ADDENDUM THAT YOU SIGNED WITH
20 DAVID DUONG ON MONDAY, OCTOBER 9, 2000, CORRECT?

21 A. YES.

22 Q. NOW, LET ME DRAW YOUR ATTENTION TO THE RECITAL THAT
23 APPEARS AT THE BEGINNING OF THAT DOCUMENT. AND THAT'S YOUR
24 SIGNATURE ONCE AGAIN ABOVE YOUR NAME, CORRECT?

25 A. YES, IT IS.

26 Q. AND AT THE BEGINNING OF THIS DOCUMENT, DOES THE
27 DOCUMENT THAT YOU SIGNED SAY THE PARTIES HAVE LEARNED THAT
28 THE CITY OF SAN JOSE MAY REQUIRE CALIFORNIA WASTE SOLUTIONS,

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1 INC., CWS, AND NORCAL WASTE SYSTEMS, INC., NORCAL, TO
2 PROVIDE WAGE AND BENEFIT PACKAGES THAT ARE DIFFERENT THAT --
3 I'M ASSUMING THAT SHOULD READ "THAN" -- CWS'S CURRENT WAGE
4 AND BENEFIT PACKAGES, CORRECT?

5 A. YES, IT SAYS THAT.

6 Q. WHAT REQUIREMENT ARE YOU REFERRING TO IN THIS

7 MONDAY, OCTOBER 9, 2000 ADDENDUM TO YOUR AGREEMENT WITH CWS?

8 A. THERE WAS NOT A REQUIREMENT, THERE MIGHT BE A
9 REQUIREMENT. WE WERE FEELING THE POLITICAL PRESSURE THAT
10 THE MAYOR WANTED US TO HAVE, CWS TO HAVE TEAMSTERS IN THEIR
11 FACILITY.

12 Q. YOU'RE SAYING THIS WAS, YOU DIDN'T CONSTRUE THIS AS
13 A REQUIREMENT, YOU CONSTRUED IT AS A POSSIBLE REQUIREMENT?

14 A. WE KNEW, WE WERE GETTING A LOT OF POLITICAL
15 PRESSURE.

16 Q. FROM WHOM?

17 A. THE MAYOR'S OFFICE.

18 Q. WHEN YOU SAY THE MAYOR'S OFFICE, CAN YOU NAME
19 NAMES?

20 A. MAYOR GONZALES AND JOE GUERRA.

21 Q. AND HOW DID JOE GUERRA COMMUNICATE TO YOU THAT
22 CAUSED YOU TO FEEL PRESSURE?

23 A. HE PARTICIPATED IN THE MEETING ON OCTOBER 6.

24 Q. WHAT DID HE SAY AT THAT OCTOBER 6 MEETING?

25 A. I CAN'T REMEMBER SPECIFICALLY, SOMETHING ALONG THE
26 LINE OF THE MAYOR WANTS YOU TO DO THIS. AND I APOLOGIZE, I
27 JUST CAN'T REMEMBER SPECIFICALLY.

28 Q. I'M HAVING TROUBLE HEARING YOU. COULD YOU REPEAT

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1 YOUR LAST ANSWER?

2 A. I SAID SOMETHING ALONG THE LINE OF JOE GUERRA
3 INDICATED THAT THIS WAS THE MAYOR, SOMETHING THE MAYOR
4 WANTED US TO DO. I BELIEVE HE HAD OTHER DISCUSSIONS WITH

5 BILL JONES SUBSEQUENT TO THAT MEETING.

6 Q. MR. GUERRA'S COMMENTS ABOUT THIS IS SOMETHING THE
7 MAYOR WANTS YOU TO DO, WAS THAT SAID IN FRONT OF THE MAYOR
8 OR IN SOME SEPARATE SETTING?

9 A. I THINK IT HAPPENED AT THE OCTOBER 6 MEETING, WHEN
10 THE MAYOR WAS STILL THERE.

11 Q. AND YOU DID NOT CONSTRUE THAT AS A REQUIREMENT, YOU
12 CONSTRUED IT AS SOMETHING ELSE, IS THAT WHAT YOU'RE TELLING
13 US?

14 A. AS WE STEPPED BACK AND CONSIDERED WHAT WE NEEDED TO
15 DO, WE WERE VERY SURE OUR PRICE WAS SUBSTANTIALLY LOWER THAN
16 ANYBODY ELSE'S IN THIS PROCESS. AND THE ABILITY EVEN OF A
17 MAYOR TO TURN DOWN A PROPOSAL THAT WAS MUCH CHEAPER, AS
18 CHEAP AS OURS WAS COMPARED TO EVERYBODY ELSE, WOULD BE A
19 DIFFICULT THING. BUT NEVERTHELESS, WE FELT SIGNIFICANT
20 PRESSURE FROM HIS OFFICE TO HAVE CWS BE A TEAMSTER SHOP.

21 Q. APPARENTLY, YOU FELT IT WAS SIGNIFICANT ENOUGH THAT
22 YOU UNDERTOOK TO OBLIGATE NORCAL TO AN ESTIMATED TWO MILLION
23 A YEAR LIABILITY TO CWS FOR FIVE YEARS, CORRECT?

24 A. YES, WE DID.

25 Q. SO THE REFERENCE IN THIS ADDENDUM TO THE PARTIES
26 LEARNING THAT THE CITY OF SAN JOSE MAY REQUIRE CALIFORNIA
27 WASTE SOLUTIONS AND NORCAL TO PROVIDE DIFFERENT WAGE AND
28 BENEFIT PACKAGES FROM THEIR PROPOSAL, THAT'S A REFERENCE TO

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1 WHAT?

2 A. THE PRESSURE WE WERE GETTING AT THE TIME FROM THE
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3 MAYOR' S OFFICE.

4 Q. IS IT A REFERENCE TO THE OCTOBER 6, 2000 MEETING AT
5 THE MAYOR' S OFFICE?

6 A. THAT WOULD BE PART OF IT, YES.

7 Q. WHAT ELSE WOULD BE PART OF IT?

8 A. I THINK THERE WERE OTHER DISCUSSIONS BETWEEN, I
9 THINK, JOE GUERRA AND BILL JONES, WHO WAS ON OUR STAFF AT
10 THE TIME, ABOUT THIS ISSUE.

11 Q. PRESUMABLY, THAT WOULD HAVE BEEN PRIOR TO YOUR
12 SIGNING THIS OCTOBER 9 ADDENDUM, RIGHT?

13 A. I BELIEVE SO, YES.

14 Q. DO YOU REMEMBER THE TIME OF THE DAY OR NIGHT WHEN
15 YOU SIGNED THIS OCTOBER 9 ADDENDUM?

16 A. NO, I DON' T.

17 Q. WHO IS JON BRASLAW, B-R-A-S-L-A-W?

18 A. NORCAL CORPORATE CONTROLLER.

19 Q. WHO DOES MR. BRASLAW REPORT TO?

20 A. MARK LOMELE, OUR CHIEF FINANCIAL OFFICER.

21 Q. WHO DOES -- THAT' S L-O-M-E-L-E?

22 A. YES.

23 Q. WHO DOES MARK LOMELE REPORT TO?

24 A. TO ME.

25 Q. DID YOU TELL JON BRASLAW THAT THE CITY REQUIRED CWS
26 TO SIGN WITH THE TEAMSTERS?

27 A. NOT THAT I RECALL.

28 Q. DID YOU TELL MARK LOMELE THAT THE CITY REQUIRED CWS

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1 TO SIGN WITH THE TEAMSTERS?

2 A. NOT THAT I RECALL.

3 MR. FINKELSTEIN: I WILL ASK TO HAVE A DOCUMENT
4 MARKED AS EXHIBIT 75 AN OCTOBER 31, 2003 MEMO, JON BRASLAW,
5 CORPORATE CONTROLLER, TO KPMG. SUBJECT, "SAN JOSE RECYCLE
6 PROCESSES." WOULD YOU TAKE A LOOK AT THAT DOCUMENT,
7 MR. SANGIACOMO, FOR A MOMENT.

8 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
9 JURY EXHIBIT 75.)

10 Q. HAVE YOU SEEN THIS DOCUMENT BEFORE?

11 A. I THINK SO.

12 Q. AND IS THIS A MEMO FROM NORCAL'S CORPORATE
13 CONTROLLER, JON BRASLAW TO KPMG?

14 A. THAT'S WHAT IT STATES, YES.

15 Q. AND THE DATE OF THIS MEMO IS OCTOBER 31, 2003,
16 CORRECT?

17 A. CORRECT.

18 Q. AND WHO IS KPMG?

19 A. KPMG IS A PUBLIC ACCOUNTING FIRM WHO HAPPENED TO BE
20 NORCAL'S AUDITORS.

21 Q. AND DO THEY PERFORM AN ANNUAL AUDIT ON NORCAL'S
22 FINANCIAL STATEMENTS?

23 A. THEY DO.

24 Q. WHY IS THAT?

25 A. WE HAVE AN ANNUAL AUDIT IN LARGE PART BECAUSE OF
26 FINANCING ARRANGEMENTS THAT WE HAVE WITH A LARGE GROUP OF
27 BANKS THAT REQUIRE AN AUDIT OF OUR FINANCES.

28 Q. AND WHAT IS THIS LARGE GROUP OF BANKS?

1 A. I ' M SORRY?

2 Q. WHO IS THIS LARGE GROUP OF BANKS?

3 A. TODAY THERE' S ABOUT 14 BANKS HEADED BY BANK OF

4 AMERICA WITH SEVERAL OTHERS IN ASIAN POSITIONS AND OTHERS

5 THAT JUST PARTICIPATE IN LOANS.

6 Q. BACK IN 2003, WAS IT ALSO BANK OF AMERICA?

7 A. NO, IT' S THE SAME GROUP OF PEOPLE, BUT USED TO BE

8 BANK OF BOSTON AND FLEET BANK. THROUGH ACQUISITIONS AND

9 MERGERS, THEY HAVE BECOME BANK OF AMERICA.

10 Q. B OF A WAS SORT OF THE LEAD FINANCING INSTITUTION?

11 A. THEY ARE TODAY.

12 Q. AND IN 2003 IT WAS FLEET BOSTON THAT BECAME

13 ACQUIRED BY B OF A?

14 A. IT WAS ONE OF THOSE NAMES.

15 Q. BANK OF AMERICA TODAY IS SUCCESSOR IN INTEREST TO

16 WHATEVER BANK WAS LEAD BANK ON YOUR FINANCING ARRANGEMENTS,

17 CORRECT?

18 A. THAT' S CORRECT.

19 Q. NOW, LET ME DIRECT YOUR ATTENTION TO THIS MEMO. IN

20 THIS MEMO, IN THE MIDDLE OF THE SECOND PARAGRAPH, IS THERE A

21 LINE THAT READS:

22 "THE CITY REQUIRED THE USE OF TEAMSTERS INSTEAD OF

23 I LWU WORKERS AS PART OF THE FINAL CONTRACT NEGOTIATIONS WITH

24 NORCAL. "

25 DO YOU SEE THAT LINE?

26 A. I SEE IT.

27 Q. DO YOU KNOW WHAT THAT IS A REFERENCE TO?

28 A. IT' S OVER THE DISCUSSIONS WE HAD BEEN HAVING AS TO

1 WHETHER OR NOT CWS CAN BE A TEAMSTER SHOP OR ILWU SHOP.

2 Q. DISCUSSIONS WITH WHOM?

3 A. THE ONES WE HAD BEEN HAVING, INVOLVING THE MAYOR OF
4 SAN JOSE.

5 Q. YOU BELIEVE THAT'S A REFERENCE TO YOUR OCTOBER 6,
6 2000 MEETING WITH MAYOR GONZALES AT CITY HALL?

7 A. I DON'T KNOW IT'S JUST THAT, BUT THE OVERALL
8 DISCUSSIONS, NEGOTIATIONS WITH THE CITY ENDED UP THAT CWS
9 BECAME A TEAMSTER SHOP.

10 Q. WELL, OTHER THAN MAYOR GONZALES AND HIS BUDGET
11 POLICY DIRECTOR, JOE GUERRA, WHO ELSE FROM THE CITY ASKED
12 NORCAL TO GET CWS TO SIGN WITH THE TEAMSTERS?

13 A. NO ONE THAT I CAN REMEMBER.

14 Q. AND THE REFERENCE TO FINAL CONTRACT NEGOTIATIONS,
15 WHAT IS THAT A REFERENCE TO?

16 A. I'M NOT SURE.

17 Q. HOW DID MR. BRASLAW GET THAT INFORMATION?

18 A. AGAIN, I'M NOT SURE.

19 Q. DID YOU CONSIDER YOUR OCTOBER 6, 2000 MEETING WITH
20 MAYOR GONZALES AND JOE GUERRA AT CITY HALL TO BE PART OF
21 SOME FINAL CONTRACT NEGOTIATIONS?

22 A. I'M NOT SURE IF I KNOW HOW TO ANSWER THAT WITHOUT
23 DISCUSSING IT WITH AN ATTORNEY.

24 Q. IF YOU WOULD LIKE TO STEP OUTSIDE, YOU MAY DO SO.

25 A. OKAY. CAN I TAKE THIS?

26 Q. SURE. ACTUALLY, THAT'S AN EXHIBIT. WHY DON'T YOU
27 LEAVE THAT HERE, I HAVE ANOTHER COPY THAT YOU CAN TAKE

28 OUTSIDE.

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1 (THE WITNESS DEPARTED.)

2 MR. FINKELSTEIN: LET ME JUST ADVISE THE GRAND
3 JURY, A WITNESS HAS A RIGHT TO CONSULT WITH AN ATTORNEY, AND
4 THAT'S JUST AN OPPORTUNITY THEY HAVE. THE ATTORNEY CAN'T BE
5 IN THE ROOM LIKE IN A TRIAL, BUT THEY CAN STEP OUTSIDE ANY
6 TIME AND TALK TO THEIR ATTORNEY, AND YOU SHOULD NOT DRAW ANY
7 NEGATIVE INFERENCES FROM THE FACT THAT A WITNESS WANTS TO
8 CONSULT AN ATTORNEY.

9 MAYBE WE SHOULD TAKE A FIVE-MINUTE RECESS.

10 THE FOREMAN: WE'RE IN RECESS FIVE MINUTES. AND STAY IN THE
11 AREA SO WE CAN RECONVENE.

12 (A BRIEF RECESS WAS TAKEN.)

13 MR. FINKELSTEIN: I'LL ASK THE REPORTER TO READ
14 BACK THE QUESTION, SO DON'T ANSWER RIGHT AWAY, SHE NEEDS A
15 MOMENT.

16 (THE LAST QUESTION WAS READ.)

17 BY MR. FINKELSTEIN:

18 Q. DO YOU HAVE THE QUESTION IN MIND?

19 A. I DO.

20 Q. THE ANSWER IS --

21 A. I THINK WHEN WE WENT INTO THE MEETING, WE DIDN'T
22 EVEN KNOW IF WE HAD THE CONTRACT. I DON'T KNOW THAT WE
23 THOUGHT THIS WAS CONTRACT NEGOTIATIONS; THIS WAS A MEETING
24 TO SEE WHERE THINGS WERE GOING TO GO FROM THERE.

25 Q. SO DID YOU SUGGEST TO JON BRASLAW THAT THE CITY

26 REQUIRED THE USE OF THE TEAMSTERS INSTEAD OF ILWU WORKERS AS
27 PART OF THE FINAL CONTRACT NEGOTIATIONS WITH NORCAL?

28 A. I DON'T REMEMBER IF I SAID THAT TO HIM OR NOT. I

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1 DON'T HAVE A RECOLLECTION OF IT.

2 Q. DID YOU SUGGEST TO ANYONE EMPLOYED BY NORCAL THAT
3 THE CITY REQUIRED THE USE OF THE TEAMSTERS INSTEAD OF ILWU
4 WORKERS AS PART OF THE FINAL CONTRACT NEGOTIATIONS WITH
5 NORCAL?

6 A. I DON'T RECALL SAYING THAT.

7 Q. IS IT YOUR TESTIMONY, THEN, THAT YOU HAVE
8 ABSOLUTELY NO IDEA WHAT THE BASIS FOR MR. BRASLAW'S
9 STATEMENT TO KPMG THAT THE CITY REQUIRED THE USE OF THE
10 TEAMSTERS INSTEAD OF ILWU WORKERS AS PART OF THE FINAL
11 CONTRACT NEGOTIATIONS WITH NORCAL WAS?

12 A. SORRY, WOULD YOU REPEAT THE QUESTION?

13 Q. YEAH. I'VE ASKED YOU WHETHER YOU TOLD MR. BRASLAW
14 OR ANYONE ELSE NOW AT NORCAL THAT THE CITY REQUIRED THE USE
15 OF TEAMSTERS INSTEAD OF ILWU WORKERS, AND YOU SAID YOU
16 COULDN'T RECALL, CORRECT?

17 A. CORRECT.

18 Q. NOW, I'M ASKING YOU WHETHER IT'S YOUR TESTIMONY
19 THAT YOU HAVE ABSOLUTELY NO IDEA WHERE MR. BRASLAW GOT THE
20 INFORMATION THAT THE CITY REQUIRED THE USE OF THE TEAMSTERS
21 INSTEAD OF ILWU WORKERS.

22 A. I'M NOT AWARE OF WHO HE SPOKE TO IN THE
23 ORGANIZATION OR IF HE SPOKE TO ATTORNEYS. I DON'T KNOW

24 WHERE HE GOT IT.

25 Q. AND YOU DIDN'T SPEAK TO ANYONE ELSE AT NORCAL WHO
26 MIGHT HAVE CONVEYED THE INFORMATION TO MR. BRASLAW AS FAR AS
27 YOU RECALL?

28 A. I HAVE SPOKEN TO OTHER PEOPLE AT NORCAL ABOUT THESE

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1 ISSUES.

2 Q. YES. AND DID YOU CONVEY TO ANY OF THESE OTHER
3 PEOPLE THAT THE CITY WAS REQUIRING CWS TO USE TEAMSTERS
4 INSTEAD OF ILWU WORKERS?

5 A. NOT THAT I RECALL, NO.

6 Q. SO YOU'RE NOT ABLE TO HELP US FIGURE OUT HOW
7 MR. BRASLAW GOT THE IDEA THAT THE CITY WAS REQUIRING CWS TO
8 USE TEAMSTERS INSTEAD OF ILWU WORKERS AS YOU SIT HERE TODAY?

9 A. THAT'S RIGHT, I'M NOT.

10 Q. OKAY. DID YOU EVER TELL MR. BRASLAW THAT THE CITY
11 MADE A VERBAL COMMITMENT AT THAT TIME TO REIMBURSE NORCAL
12 FOR ADDITIONAL COSTS INCURRED AS A RESULT OF CWS CHANGING
13 FROM ILWU WORKERS TO TEAMSTERS?

14 A. I DON'T RECALL IT THAT WAY.

15 MR. FINKELSTEIN: I WILL ASK TO HAVE MARKED AS
16 EXHIBIT 76 A NOVEMBER 20, 2004 MEMO FROM JON BRASLAW NORCAL
17 CORPORATE CONTROLLER, TO KPMG, REGARDING SAN JOSE RECYCLING
18 PROCESSING.

19 THE FOREMAN: SO MARKED.

20 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
21 JURY EXHIBIT 76.)

22 BY MR. FINKELSTEIN:

23 Q. COULD YOU TAKE A LOOK AT THE NEXT EXHIBIT AND TELL
24 US IF YOU'VE SEEN IT BEFORE?

25 A. I BELIEVE I HAVE.

26 Q. AND I TAKE IT THIS APPEARS TO BE A NOVEMBER 20,
27 2004 MEMO FROM JON BRASLAW TO KPMG AGAIN?

28 A. THAT'S CORRECT.

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1 Q. LET ME DIRECT YOUR ATTENTION TO A SENTENCE THAT
2 APPEARS ON THE FIRST PAGE OF THIS DOCUMENT. AGAIN, IT'S IN
3 THE MIDDLE OF THE SECOND PARAGRAPH, AND IT SAYS, "THE CITY
4 REQUIRED THE USE OF THE TEAMSTERS INSTEAD OF ILWU WORKERS AS
5 PART OF THE FINAL CONTRACT NEGOTIATIONS WITH NORCAL AND MADE
6 A VERBAL COMMITMENT AT THAT TIME TO REIMBURSE THE COMPANY
7 FOR ADDITIONAL COSTS INCURRED AS A RESULT OF THIS CHANGE."

8 DO YOU SEE THAT SENTENCE?

9 A. I SEE IT.

10 Q. OKAY. DO YOU HAVE ANY IDEA WHAT THE SOURCE OF
11 INFORMATION WAS FOR MR. BRASLAW THAT LED HIM TO STATE THAT
12 IN HIS MEMO TO THE AUDITORS?

13 A. NOT SPECIFICALLY.

14 Q. I'M SORRY?

15 A. NOT SPECIFICALLY.

16 Q. HOW ABOUT GENERALLY?

17 A. UH -- IT WOULD PROBABLY WOULD BE AN OUTGROWTH OF
18 DISCUSSIONS THAT WE HAD ABOUT THE OCTOBER 4 MEETING -- I'M
19 SORRY, OCTOBER 6 MEETING WITH THE MAYOR IN 2000, AND

20 SUBSEQUENT DISCUSSIONS THAT WE HAVE BEEN HAVING WITH
21 JOE GUERRA OF HIS OFFICE.

22 Q. WELL, THE TIME WHEN THE CITY MAY HAVE REQUIRED
23 NORCAL TO GET CWS TO SIGN WITH THE TEAMSTERS, THAT TIME
24 REFERS TO THE OCTOBER 6, 2000 MEETING, CORRECT?

25 A. YES.

26 Q. THAT'S WHEN IT HAPPENED, RIGHT?

27 A. WELL, THAT'S WHEN THE DISCUSSIONS ABOUT WHETHER OR
28 NOT CWS WAS GOING TO BE A TEAMSTER SHOP HAPPENED WITH THE

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1 MAYOR.

2 Q. OKAY. PRIOR TO OCTOBER 6, 2000, THERE WAS NO
3 SUGGESTION BY ANYONE FROM THE CITY THAT CWS NEEDED TO USE
4 TEAMSTERS, CORRECT?

5 A. NOT THAT I WAS AWARE OF.

6 Q. THAT'S WHY YOU SENT A LETTER TO THE MAYOR EARLIER
7 THAT WEEK REITERATING THAT CWS WAS GOING TO USE ILWU
8 WORKERS, RIGHT?

9 A. SOMETHING LIKE THAT, YES.

10 Q. AND THIS OCTOBER 6, 2000 MEETING OCCURS, AND ON
11 THAT FRIDAY, OCTOBER 6, THE FOLLOWING MONDAY, YOU AMEND YOUR
12 AGREEMENT WITH CWS SO AS TO REIMBURSE CWS FOR THE EXTRA COST
13 OF USING TEAMSTERS, RIGHT?

14 A. THAT'S CORRECT.

15 Q. SO WHETHER IT'S PROPERLY CHARACTERIZED AS A
16 REQUIREMENT, SUGGESTION OR ANYTHING ELSE, WHATEVER IT WAS,
17 CAN WE AT LEAST AGREE THAT IT HAPPENED AT YOUR OCTOBER 6,

18 2000 MEETING WITH MAYOR GONZALES AT CITY HALL?

19 A. OH, THAT'S TRUE.

20 Q. IS IT ALSO ACCURATE TO SAY THAT IS WHEN SOMETHING
21 LIKE A REQUIREMENT WAS COMMUNICATED TO YOU BY THE MAYOR?

22 A. SOMETHING LIKE A REQUIREMENT, YES.

23 Q. SOMETHING WHICH SOMEHOW LATER ON GETS CHARACTERIZED
24 BY NORCAL'S CORPORATE CONTROLLER AS A REQUIREMENT, RIGHT?

25 A. APPARENTLY SO, YES.

26 Q. AND CAN WE AT LEAST ESTABLISH THAT MR. BRASLAW
27 WASN'T IN THE ROOM WITH YOU AND THE MAYOR ON OCTOBER 6,
28 2000?

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1 A. HE WAS NOT.

2 Q. SO HE MUST HAVE GOTTEN THAT INFORMATION FROM
3 SOMEONE WHO WAS IN THE ROOM, CORRECT?

4 A. MAYBE NOT FIRS THAND.

5 Q. MAYBE NOT FIRS THAND, BUT IT MUST HAVE ORIGINATED,
6 THAT INFORMATION MUST HAVE ORIGINATED FROM SOMEONE AT NORCAL
7 WHO WAS IN THE ROOM. CAN WE AT LEAST AGREE ON THAT?

8 A. CERTAINLY THAT CONCEPT MAKES SENSE. I DON'T
9 REMEMBER IT BEING SAID.

10 Q. AND THE ONLY PEOPLE FROM NORCAL WHO WERE IN THE
11 ROOM WERE YOU AND BILL JONES?

12 A. THAT'S CORRECT.

13 Q. BILL JONES WAS NOT AT THE CORPORATE LEVEL, HE WAS
14 AT THE LOCAL LEVEL, CORRECT?

15 A. HE WAS IN THE SOUTH BAY GROUP IN SAN JOSE.

16 Q. BILL JONES DOES NOT ORDINARILY INTERACT WITH THE
17 CFO AND CONTROLLER OF NORCAL, RIGHT?

18 A. IF HE HAD BEEN AROUND AND THERE WERE ISSUES, HE
19 WOULD HAVE, BUT I DON'T THINK HE WAS AROUND IN 2004.

20 Q. OKAY. SO IN THIS 2004 MEMO FROM BRASLAW TO KPMG,
21 THE NOTION OF A VERBAL COMMITMENT MAKES REFERENCE, IF YOU
22 LOOK AT THE MEMO, TO AT THAT TIME, RIGHT?

23 A. THAT'S WHAT IT SAYS.

24 Q. SO AT THAT TIME MEANS THE SAME TIME WHEN THE CITY
25 MAY HAVE REQUIRED OR SUGGESTED THAT CWS USE TEAMSTERS,
26 CORRECT?

27 A. I WOULD THINK SO.

28 Q. YEAH. SO IT DOESN'T APPLY TO SUBSEQUENT

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1 COMMUNICATIONS WITH THE CITY ABOUT INCREASES, RATE HIKES, OR
2 AMENDING THE CONTRACT TO GET ADDITIONAL MONEY, CORRECT?

3 A. PROBABLY NOT.

4 Q. SO A FEW MOMENTS AGO WHEN YOU SUGGESTED IT MIGHT
5 INCLUDE DISCUSSIONS WITH JOE GUERRA THAT HAPPENED
6 SUBSEQUENTLY, THAT WAS NOT CORRECT; ISN'T THAT TRUE?

7 A. THERE WERE SUBSEQUENT DISCUSSIONS WHERE HE
8 ACKNOWLEDGED IN HIS OPINION THAT THE MAYOR HAD MADE A
9 COMMITMENT TO US, THAT HE WOULD MAKE US WHOLE.

10 Q. RIGHT. BUT THE STATEMENT BY MR. BRASLAW TO THE
11 AUDITORS MAKES REFERENCE TO A VERBAL COMMITMENT AT THAT
12 TIME, MEANING THE TIME WHEN THE CITY REQUIRED THE USE OF
13 TEAMSTERS BY CWS, CORRECT?

- 14 A. I THINK THAT'S WHAT IT SAYS, YES.
- 15 Q. AND I BELIEVE IN YOUR TESTIMONY LAST WEEK YOU WERE
16 NOT WILLING TO CONSTRUE WHAT THE MAYOR SAID TO YOU ON
17 OCTOBER 6, 2000 AS A VERBAL COMMITMENT TO REIMBURSE NORCAL;
18 IS THAT CORRECT?
- 19 A. I DON'T THINK, I STILL DON'T BELIEVE HE MADE A FIRM
20 COMMITMENT.
- 21 Q. OKAY. SO WHEN YOU SAW THIS MEMO FROM MR. BRASLAW
22 GOING TO THE AUDITORS REGARDING THE FINANCIAL STATEMENTS
23 THAT THE BANKS RELY ON FOR FINANCING YOUR COMPANY, DID YOU
24 GO TO MR. BRASLAW AND SAY, I DON'T THINK YOU PUT THIS
25 CORRECT, I THINK YOU OVERSTATED THE SITUATION, IT WASN'T A
26 VERBAL COMMITMENT. DID YOU SAY THAT TO MR. BRASLAW?
- 27 A. NOT THAT I RECALL.
- 28 Q. WHY NOT, WHY DIDN'T YOU CORRECT IT?

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- 1 A. I DON'T KNOW.
- 2 Q. WELL, LET ME ASK YOU DIRECTLY SO WE DON'T HAVE TO
3 SPECULATE ON THIS. IN 2003 AND 2004, WHEN THIS EXPECTATION,
4 AS YOU CHARACTERIZE IT, OF GETTING REIMBURSED BY THE CITY IS
5 BEING CARRIED ON NORCAL'S FINANCIAL STATEMENTS AS A
6 RECEIVABLE, ARE YOU CONCERNED, IS THERE SOME CONCERN ABOUT
7 CONTINUING TO GET FINANCING OR THE FINANCING DRYING UP IF
8 THAT'S NOT REFLECTED IN THE FINANCIAL STATEMENT AS A
9 RECEIVABLE?
- 10 A. NO. I WAS NOT.
- 11 Q. OKAY. WAS THERE SOME OTHER REASON YOU FELT AN

12 EXPECTATION SHORT OF A COMMITMENT NEEDED TO BE REFLECTED IN
13 YOUR FINANCIAL STATEMENT AS A RECEIVABLE BEFORE IT WAS PAID
14 OR FIRMED UP?

15 A. I'M SORRY -- THAT DIDN'T SINK IN.

16 Q. OKAY. I'M SORRY IF THE QUESTIONS AREN'T
17 WELL-FRAMED. I'M TRYING TO UNDERSTAND WHAT'S GOING ON HERE.
18 LET ME BE MORE DIRECT ABOUT IT, MR. SANGIACOMO. YOU'VE TOLD
19 US NOW WHAT YOU SAY IS YOUR BEST RECOLLECTION OF WHAT
20 HAPPENED WITH THE MAYOR ON OCTOBER 6 OF 2000, AND IT SEEMS
21 TO ME YOUR TESTIMONY FALLS A LITTLE SHORT BASED ON YOUR
22 RECOLLECTION NOW ABOUT THE MAYOR REQUIRING CWS TO GO WITH
23 THE TEAMSTERS AND MAKING A VERBAL COMMITMENT TO REIMBURSE
24 NORCAL FOR THE EXTRA COSTS INVOLVED IN SWITCHING TO
25 TEAMSTERS. AND SO MY QUESTION IS, LOOKING AT WHAT'S SAID
26 INTERNALLY FOLLOWING THE OCTOBER 6 MEETING PRIOR TO THIS
27 GRAND JURY INVESTIGATION, IT SEEMS TO BE CHARACTERIZED A
28 LITTLE MORE STRONGLY.

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1 WE HAVE A REQUIREMENT. WE DON'T HAVE A
2 SUGGESTION, WE HAVE A REQUIREMENT. WE DON'T HAVE A PROMISE
3 TO TRY, WE HAVE A VERBAL COMMITMENT. SO I'M TRYING TO
4 UNDERSTAND WHAT'S GOING ON. IS THAT CLOSER TO WHAT
5 HAPPENED, AND IS IT SIMPLY THE PASSAGE OF TIME THAT HAS
6 CAUSED TO YOU REMEMBER THIS LESS STRONGLY, OR DID YOU HAVE
7 SOME OTHER REASON TO OVERSTATE WHAT THE MAYOR SAID TO THE
8 AUDITOR BECAUSE OF SOMETHING GOING ON WITH YOUR FINANCIAL
9 STATEMENTS? WHICH IS IT?

10 A. I BELIEVE OVER TIME, AS I RECALL THE EVENTS OF
11 OCTOBER, OR THE COMMENTS MADE TO US ON OCTOBER 6, THAT THE
12 PRESSURE WE FELT TO MAKE A COMMITMENT TO THE MAYOR THAT WE
13 WOULD CAUSE CWS TO BE A TEAMSTER SHOP WAS VERY HEAVILY
14 WEIGHTED ON WHETHER OR NOT HE WOULD RECOMMEND TO THE CITY
15 COUNCIL THAT WE GET THIS CONTRACT OR NOT. I BELIEVE I SAW
16 THAT AS A, FOR THE MAYOR'S COMMENTS WERE A REAL COMMITMENT
17 TO US, THAT HE WOULD DO EVERYTHING HE COULD TO GET US THE
18 ADDITIONAL MONEY, THAT HE WOULD DO WHAT HE COULD TO MAKE
19 SURE WE GOT THE CONTRACT AMENDMENT WHEN THE TIME CAME AND
20 WAS APPROPRIATE IN HIS MIND. BUT I DON'T RECALL THAT HE
21 EVER SAID DEFINITELY THAT HE WOULD DO IT.

22 Q. DO WHAT, GET YOU THE EXTRA MONEY?

23 A. THAT HE WOULD GET US THE EXTRA MONEY OR WOULD CAUSE
24 THE CONTRACT TO BE AMENDED SO THAT WOULD HAPPEN.

25 Q. SO WHY WOULD YOU RISK TURNING A MILLION DOLLAR A
26 YEAR PROFIT INTO A MILLION DOLLAR ANNUAL LOSS OVER FIVE
27 YEARS IF THAT WAS THE SITUATION AS YOU HAVE NOW EXPLAINED TO
28 US? WHAT WAS IN IT FOR NORCAL? WHY NOT JUST WALK AWAY FROM

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1 THE DEAL? I ASSUME NORCAL IS NOT IN BUSINESS TO LOSE MONEY,
2 RIGHT?

3 A. THAT'S CORRECT. WE ARE NOT.

4 Q. WHY NOT JUST WALK AWAY FROM THE DEAL IF THE MAYOR
5 IS UNWILLING TO COMMIT TO THE REIMBURSEMENT OF AN ESTIMATED
6 TWO MILLION A YEAR EXPENSE FOR FIVE YEARS, AND THE DEAL IS
7 SUCH THAT THAT TWO MILLION CAUSES A SWING FROM AN ANNUAL

8 MILLION DOLLAR PROFIT TO AN ANNUAL MILLION DOLLAR LOSS, WHY
9 NOT JUST WALK AWAY FROM THE DEAL?

10 A. ONE, WE WANTED THE BUSINESS. TWO, WE THOUGHT THE
11 MAYOR WOULD LIVE UP TO HIS -- I DON'T KNOW WHAT THE RIGHT
12 THING TO CALL IT IS -- HIS INDICATION THAT HE WOULD DO HIS
13 BEST TO GET US THE CONTRACT AMENDMENT.

14 Q. HOW ABOUT ASSURANCES? I'VE SEEN THAT WORD KICKED
15 AROUND. WOULD YOU CALL IT AN ASSURANCE?

16 A. I'M NOT SURE OF THE LEGAL DEFINITION OF THAT.

17 Q. CAN YOU HELP US OUT AND EXPLAIN WHY JON BRASLAW GOT
18 THE IDEA THAT THE MAYOR MADE A VERBAL COMMITMENT TO
19 REIMBURSE FOR THE EXTRA COST OF CWS USING TEAMSTERS?

20 A. IT'S PROBABLY AN INTERPRETATION OF THINGS THAT WERE
21 SAID.

22 Q. SAID BY WHOM?

23 A. POSSIBLY BY ME, POSSIBLY BY OTHERS WHO WERE AROUND
24 ME WHEN THE MEETING IN SAN JOSE HAPPENED.

25 Q. LET'S SEE IF WE CAN ELIMINATE SOME SOURCES OF
26 INFORMATION, OKAY? THERE'S NO REQUIREMENT IN THE RFP THAT
27 CWS USE TEAMSTERS, RIGHT?

28 A. NOT THAT I RECALL.

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1 Q. THERE IS NO SUGGESTION IN THE RFP THAT THE CITY
2 WOULD REIMBURSE ANY CONTRACTORS WHO DECIDED TO SWITCH TO
3 TEAMSTERS, RIGHT?

4 A. AGAIN, I DON'T REMEMBER ANYTHING LIKE THAT.

5 Q. THE SEPTEMBER 22, 2000 STAFF RECOMMENDATION FROM

6 ESD, ENVIRONMENTAL SERVICE DEPARTMENT, NOTHING IN THERE
7 ABOUT CWS USING TEAMSTERS OR GETTING REIMBURSED FOR THE
8 EXTRA COST, RIGHT?

9 A. NOT THAT I REMEMBER.

10 Q. YOU HAVE AN OCTOBER 6, 2000 MEETING WITH THE MAYOR
11 AT CITY HALL ON A FRIDAY, AND THEREAFTER YOU ARE AGREEING TO
12 REIMBURSE CWS FOR THE EXTRA COST OF USING TEAMSTERS,
13 CORRECT?

14 A. THAT'S CORRECT.

15 Q. SO DID ANYTHING ELSE HAPPEN ON THAT FRIDAY,
16 SATURDAY OR SUNDAY OTHER THAN YOUR MEETING WITH THE MAYOR
17 THAT YOU'VE TALKED TO US ABOUT?

18 A. NOT ANYTHING I CAN RECALL THAT'S RELEVANT TO THIS
19 ISSUE.

20 Q. OKAY. SO WOULD IT BE ACCURATE THEN TO SAY THAT
21 YOUR ACTIONS WITH RESPECT TO CWS IN AMENDING YOUR AGREEMENT
22 WITH CWS ON MONDAY, OCTOBER 9, WERE BASED ON WHAT HAPPENED
23 AT THE OCTOBER 6, 2000 MEETING WITH THE MAYOR, CORRECT?

24 A. THAT'S FAIR.

25 Q. NOW, YOU RECALL THAT THERE WERE ACTUALLY TWO VOTES
26 BY THE SAN JOSE CITY COUNCIL REGARDING THE SELECTION OF
27 CONTRACTORS TO DO THE RECYCLING AND COLLECTION WORK?

28 A. THAT SOUNDS FAMILIAR.

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1 Q. THERE WAS INITIALLY AN OCTOBER 10, 2000 VOTE THE
2 DAY AFTER YOU AMENDED YOUR AGREEMENT WITH CWS, CORRECT?

3 A. I BELIEVE THAT'S CORRECT, YES.

- 4 Q. AND YOU ATTENDED THAT COUNCIL MEETING, CORRECT?
- 5 A. I BELIEVE I DID, YES.
- 6 Q. AT THAT MEETING, THERE WAS A TENTATIVE SELECTION OF
7 NORCAL SUBJECT TO AN AUDIT REVIEW OF NORCAL'S PROPOSAL,
8 CORRECT?
- 9 A. THERE WAS A TENTATIVE SELECTION. I'M NOT SURE OF
10 ALL THE REASONS WHY IT WAS TENTATIVE.
- 11 Q. IT WAS SUBJECT TO FINAL REVIEW IN DECEMBER. DO YOU
12 RECALL THAT?
- 13 A. THAT SOUNDS FAMILIAR, YES.
- 14 Q. AND DO YOU RECALL THAT THE SECOND AND FINAL VOTE
15 TOOK PLACE ON DECEMBER 12, 2000?
- 16 A. SOUNDS ACCURATE.
- 17 Q. OKAY. DID YOU FEEL THAT IT WAS IMPORTANT THAT
18 PRIOR TO THE SECOND VOTE ON DECEMBER 12, THE FINAL VOTE ON
19 THE SELECTION OF CONTRACTORS, THAT DAVID DUONG SIGN AN
20 AGREEMENT WITH THE TEAMSTERS?
- 21 A. I DON'T REMEMBER THAT.
- 22 Q. DID YOU ASK BILL JONES TO SEE IF HE COULD GET DAVID
23 DUONG TO SIGN AN AGREEMENT WITH THE TEAMSTERS BEFORE THE
24 SECOND COUNCIL VOTE?
- 25 A. I'M SORRY, I DON'T REMEMBER.
- 26 Q. DID BILL JONES TELL YOU JUST PRIOR TO THE SECOND
27 COUNCIL VOTE THAT DAVID DUONG HAD SIGNED AN AGREEMENT WITH
28 THE TEAMSTERS?

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- 1 A. IT SOUNDS RIGHT, BUT I'M NOT REMEMBERING.

2 Q. WHAT DOES IT MEAN WHEN YOU SAY IT SOUNDS RIGHT, BUT
3 YOU DON'T REMEMBER? I WASN'T THERE, YOU UNDERSTAND. WE'RE
4 TRYING TO FIND OUT, AND WHAT WE HAVE TO RELY ON ARE
5 WITNESSES.

6 A. MY MEMORY IS FOGGY OF THAT. IT SEEMS LIKE
7 SOMETHING THAT HAPPENED. I DON'T REMEMBER SPECIFICALLY.

8 Q. WELL, LET ME ASK YOU THIS. YOU HAD THIS OCTOBER 6,
9 2000 MEETING WITH THE MAYOR, AND YOU COME AWAY BELIEVING
10 THAT NORCAL'S CHANCES OF GETTING A CONTRACT WOULD BE
11 ENHANCED IF CWS SIGNED WITH THE TEAMSTERS, CORRECT?

12 A. (NO RESPONSE.)

13 Q. THAT NORCAL'S CHANCES OF GETTING A CONTRACT FROM
14 THE CITY WOULD BE IMPROVED IF CWS SIGNS WITH THE TEAMSTERS,
15 CORRECT?

16 A. I BELIEVE THAT'S FAIR, YES.

17 Q. YOU HAVE -- THEREAFTER, A FEW DAYS LATER, THERE IS
18 AN INITIAL VOTE AND TENTATIVE SELECTION OF NORCAL ON OCTOBER
19 10, 2000, CORRECT?

20 A. CORRECT.

21 Q. THE FINAL VOTE IS ON DECEMBER 12, 2000, CORRECT?

22 A. I THINK SO.

23 Q. OKAY. SO, AND I THINK WE'RE GOING TO SEE THAT ON
24 DECEMBER 11, 2000, DAVID DUONG DOES SIGN WITH THE TEAMSTERS
25 THE DAY BEFORE THE SECOND AND FINAL VOTE. OKAY?

26 A. THAT COULD WELL HAVE HAPPENED, YES.

27 Q. WHO AT NORCAL, SOMEBODY WOULD HAVE -- SINCE YOU
28 FELT THAT GETTING CWS TO SIGN WITH THE TEAMSTERS WOULD

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1 ENHANCE NORCAL' S IMPROVED CHANCES OF GETTING A CONTRACT,
2 RIGHT, YOU FELT THAT WAY, RIGHT?

3 A. YES.

4 Q. I ASSUME ONCE CWS SIGNED WITH THE TEAMSTERS YOU
5 DIDN' T KEEP IT A SECRET, SOMEBODY MUST HAVE COMMUNICATED
6 THAT TO SOMEONE AT CITY HALL TO SAY, LOOK, WE' VE DONE WHAT
7 YOU ASKED?

8 A. I BELIEVE SO.

9 Q. WHO DID THAT?

10 A. WHO ACTUALLY MADE THE COMMUNICATI ON?

11 Q. YES.

12 A. IT COULD HAVE BEEN ME, IT COULD HAVE BEEN BILL
13 JONES. I' M NOT SURE.

14 Q. YOU DON' T REMEMBER?

15 A. I DON' T REMEMBER.

16 Q. HOW WAS THE COMMUNICATI ON MADE?

17 A. I BELIEVE IN WRITING, BUT I DON' T REMEMBER.

18 Q. OKAY. AND DID YOU THINK IT WAS IMPORTANT THAT
19 BEFORE THE SECOND AND FINAL COUNCIL VOTE THAT NORCAL
20 COMMUNICATE TO THE MAYOR OR AT LEAST HIS OFFICE THAT CWS HAD
21 NOW SIGNED WITH THE TEAMSTERS?

22 A. I SEEM TO REMEMBER THAT, YES.

23 Q. DO YOU THINK THAT WAS AN IMPORTANT THING TO DO?

24 A. I BELIEVE SO.

25 Q. AND WHY DID YOU THINK THAT WAS AN IMPORTANT THING
26 TO DO?

27 A. IT WAS A FOLLOWUP TO THE DISCUSSION WITH THE MAYOR
28 IN OCTOBER THAT HE ASKED THAT THAT BE A TEAMSTER SHOP. WE

1 WERE GOING TO GIVE HIM THE INDICATION IT WAS GOING TO BE A
2 TEAMSTER SHOP.

3 Q. WHY WAS THAT?

4 A. WHY WAS IT --

5 Q. WHY DID YOU WANT TO LET THE MAYOR KNOW THAT CWS WAS
6 GOING TO BE A TEAMSTER SHOP?

7 A. THAT'S WHAT HE HAD ASKED US TO DO ON OCTOBER 6.

8 Q. DO YOU THINK IT HAD ANY BEARING ON HOW THE MAYOR
9 MIGHT VOTE ON THE ISSUE?

10 A. IT CERTAINLY COULD HAVE.

11 Q. AND THAT WAS BASED ON WHAT HE TOLD YOU ON OCTOBER
12 6, 2000, CORRECT?

13 A. YES.

14 Q. SO YOUR BEST RECOLLECTION IS THAT EITHER YOU OR
15 BILL JONES ADVISED THE MAYOR'S OFFICE SHORTLY BEFORE THE
16 DECEMBER 12, 2000 FINAL VOTE THAT CWS HAD NOW AGREED TO BE A
17 TEAMSTER SHOP?

18 A. IT EITHER WOULD HAVE BEEN ONE OF US OR POSSIBLY
19 COULD HAVE BEEN CWS DIRECTLY.

20 Q. OKAY. I JUST HAVE A FEW MORE TOPICS TO ASK YOU
21 ABOUT.

22 HAS NORCAL OR ANYONE EMPLOYED ON BEHALF OF NORCAL
23 MADE ANY DONATIONS, CONTRIBUTIONS, OR PAYMENTS AT THE
24 REQUEST OF THE MAYOR OR ANYONE EMPLOYED IN THE MAYOR'S
25 OFFICE?

26 A. WE HAVE BASIC POLITICAL CONTRIBUTIONS.

27 Q. TO WHOM?

28 A. UH -- TO THE MAYOR AND/OR COMMITTEES THAT

1 APPARENTLY ARE CONTROLLED BY THE MAYOR, AND TO OTHER
2 COUNCILMEMBERS IN SAN JOSE.

3 Q. I UNDERSTAND. MY QUESTION FOCUSES ON SOMETHING A
4 LITTLE DIFFERENT. I WANT TO KNOW IF NORCAL OR ANYONE
5 EMPLOYED ON BEHALF OF NORCAL HAS MADE ANY CONTRIBUTIONS,
6 DONATIONS, PAYMENTS, OR LOANS AT THE REQUEST OF THE MAYOR.
7 MAY NOT HAVE GONE TO THE MAYOR, FOR EXAMPLE -- THIS IS JUST
8 HYPOTHETICALLY, I'M NOT SUGGESTING ANYTHING LIKE THAT
9 HAPPENED, IT'S HYPOTHETICAL. THE MAYOR OR SOMEONE EMPLOYED
10 ON BEHALF OF THE MAYOR MIGHT HAVE SAID, I WOULD REALLY LIKE
11 NORCAL TO CONTRIBUTE \$10,000 TO THE RED CROSS. OKAY. SO
12 THAT MONEY DIDN'T GO TO THE MAYOR OR HIS OFFICE, IT WENT TO
13 A THIRD PARTY. THAT'S WHAT I AM FOCUSING ON.

14 HAS NORCAL OR ANYONE EMPLOYED ON BEHALF OF NORCAL
15 MADE ANY CONTRIBUTIONS, DONATIONS, PAYMENTS, OR LOANS TO
16 ANYONE AS THE RESULT OF A REQUEST FROM THE MAYOR'S OFFICE OR
17 THE MAYOR HIMSELF?

18 A. NOT THAT I'M AWARE OF.

19 Q. OKAY. HAS NORCAL OR ANYONE EMPLOYED ON BEHALF OF
20 NORCAL MADE ANY DONATIONS, CONTRIBUTIONS, OR PAYMENTS TO CWS
21 OR ON BEHALF OF CWS OTHER THAN WHAT IS SPECIFIED IN THE
22 WRITTEN AGREEMENT BETWEEN NORCAL AND CWS? DO YOU UNDERSTAND
23 THE QUESTION?

24 A. WOULD YOU SAY IT ONE MORE TIME?

25 Q. LET ME BREAK IT DOWN FOR YOU. THERE IS A WRITTEN
26 AGREEMENT BETWEEN NORCAL AND CWS, CORRECT?

27 A. YES.

28 Q. AND AS A RESULT OF THE AMENDMENTS, THAT NOW

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1 PROVIDES FOR NORCAL MAKING PAYMENTS TO CWS, CORRECT?

2 A. CORRECT.

3 Q. I'M NOT TALKING ABOUT THOSE PAYMENTS PER THE
4 CONTRACT, I AM TALKING ABOUT PAYMENTS OUTSIDE THAT CONTRACT,
5 EITHER TO CWS OR SOMEONE ON BEHALF OF CWS, EITHER PAYMENTS,
6 CONTRIBUTIONS, DONATIONS, OR LOANS.

7 A. NOTHING I'M AWARE OF.

8 Q. OKAY.

9 MR. FINKELSTEIN: LET ME SEE IF THE JURORS HAVE
10 ANY OTHER QUESTIONS.

11 I HAVE ABOUT FOUR OR FIVE OF THEM.

12 BY MR. FINKELSTEIN:

13 Q. HERE'S AN EASY ONE. DO YOU RECALL WHAT THE
14 DIFFERENCE WAS IN AMOUNT BETWEEN THE NORCAL BID AND THE NEXT
15 LOWEST BID FOR THE CONTRACT?

16 A. NOT SPECIFICALLY, BUT IT WAS AT LEAST A COUPLE OF
17 MILLION DOLLARS A YEAR.

18 Q. OKAY. HOW DID YOU FIRST LEARN THAT YOUR BID WAS
19 LOWER THAN THOSE OF THE OTHER BIDDERS?

20 A. BEST I RECALL, IT WAS WHEN THE STAFF REPORT WAS
21 ISSUED IN SEPTEMBER OF 2000.

22 Q. THAT'S THE ESD REPORT RECOMMENDING NORCAL, AMONG
23 OTHERS?

24 A. I BELIEVE THAT'S THE SAME REPORT.

25 Q. IT HAS A SECTION THAT SUMMARIZES EACH OF THE

26 PROPOSALS, AND IS THAT WHAT YOU' RE REFERRING TO?

27 A. YES.

28 Q. PRIOR TO THE 2004 AMENDMENT BETWEEN THE

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1 NORCAL -- STRIKE THAT. PRIOR TO THE 2004 AMENDMENT TO THE
2 NORCAL AGREEMENT WITH THE CITY, DID NORCAL EVER SEND OUT ANY
3 INVOICES TO THE CITY SEEKING REIMBURSEMENT FOR THE EXTRA
4 COSTS OF CWS USING TEAMSTERS INSTEAD OF LONGSHOREMEN?

5 A. I DON' T KNOW.

6 Q. AFTER NORCAL WAS AWARDED THE CONTRACT WITH THE CITY
7 IN 2000 AND SIGNED AN AGREEMENT IN 2001, WAS THERE SOME
8 EFFORT INITIALLY TO GET NORCAL REIMBURSED WITHOUT A CONTRACT
9 AMENDMENT THAT YOU KNOW OF?

10 A. I THINK WE ALWAYS THOUGHT THERE WOULD BE A CONTRACT
11 AMENDMENT NECESSARY TO GET THE REIMBURSEMENT.

12 Q. TO GET THE WHAT?

13 A. TO GET REIMBURSED FOR THOSE EXPENSES.

14 MR. FINKELSTEIN: LET ME TAKE UP ANOTHER
15 QUESTI ON.

16 BY MR. FINKELSTEIN:

17 Q. ONE JUROR WOULD LIKE TO KNOW, IN LOOKING AT THE
18 SECOND AMENDMENT TO THE NORCAL CITY CONTRACT, APPARENTLY
19 THERE ARE SEVEN CATCH-UP PAYMENTS THAT ARE \$900,000-PLUS A
20 MONTH. THEN THERE ARE ONGOING PAYMENTS THEREAFTER OF
21 \$200,000 PER MONTH, CORRECT?

22 A. THAT SOUNDS RIGHT.

23 Q. OKAY. AND THE JUROR WANTED TO KNOW WHETHER THAT

24 WASN' T HIGH GIVEN WHAT THE PAYMENTS ARE FOR, NAMELY THE
25 DIFFERENCE IN TEAMSTER VERSUS LONGSHOREMEN WAGES. CAN YOU
26 RESPOND TO THAT QUESTION?

27 A. IF THAT WASN' T HIGH?

28 Q. THE JUROR IS INDICATING THAT HE OR SHE THINKS THAT

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1 IF YOU LOOK AT THE SEVEN CATCH-UP PAYMENTS OF SOME \$900,000
2 OR MORE PLUS THE ONGOING \$200,000 PER MONTH PAYMENTS, THAT
3 SEEMS TOO HIGH TO JUST COVER THE EXTRA COST OF TEAMSTER
4 WAGES AND BENEFITS.

5 A. THE AMOUNT THE CITY REIMBURSED WAS TIED EXACTLY TO
6 THE AMOUNT THEY HAD AGREED REPRESENTED THE ADDITIONAL WAGES
7 AND BENEFITS.

8 Q. AS A MATTER OF FACT, IF I UNDERSTAND IT, IS IT TRUE
9 THAT CWS HAD TO PROVIDE COMPUTATIONS, CALCULATIONS,
10 SPREADSHEETS TO NORCAL, AND BOTH PARTIES HAD TO TRADE THOSE
11 CALCULATIONS WITH THE CITY TO COME UP WITH THESE FIGURES; IS
12 THAT CORRECT?

13 A. THAT HAPPENED, AS WELL AS THE CITY EVENTUALLY
14 AUDITED THOSE NUMBERS.

15 Q. AND THESE WERE THE FINAL NUMBERS THE CITY AGREED
16 TO, AT LEAST THE CITY BELIEVED WERE TIED DIRECTLY TO THESE
17 WAGES AND BENEFITS?

18 A. THAT' S CORRECT.

19 MR. FINKELSTEIN: ANY OTHER QUESTIONS?

20 WE HAVE NO MORE QUESTIONS FOR YOU TODAY,

21 MR. SANGIACOMO, SO I' M SURE YOU WILL BE HAPPY TO HEAR THAT.

22 BUT YOU' RE NOT EXCUSED, WHICH MEANS YOU MAY BE RECALLED TO
23 ANSWER FURTHER QUESTIONS BEFORE THE INVESTIGATION CONCLUDES.

24 AND I UNDERSTAND THAT YOU ARE BEING REPRESENTED BY
25 MIKE BAKER, CORRECT?

26 THE WITNESS: THAT' S CORRECT.

27 MR. FINKELSTEIN: AND HE' S THE LAWYER FOR NORCAL,
28 CORRECT?

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1 THE WITNESS: YES.

2 MR. FINKELSTEIN: AND I ASSUME YOU' LL AGREE TO
3 COME WHEN WE NOTIFY MR. BAKER IF YOUR FURTHER APPEARANCE IS
4 REQUIRED.

5 THE WITNESS: THAT' S FINE.

6 MR. FINKELSTEIN: THANK YOU VERY MUCH.

7 THE FOREMAN: MR. SANGIACOMO, I READ YOU AN
8 ADMONITION REQUIRING CONFIDENTIALITY ABOUT THE QUESTIONS AND
9 INFORMATION YOU LEARNED IN THIS PROCEEDING. DO YOU
10 UNDERSTAND THAT THAT APPLIES?

11 THE WITNESS: I DO, YES.

12 MR. FINKELSTEIN: WHY DON' T WE TAKE A SHORT
13 RECESS.

14 (A RECESS WAS TAKEN, AFTER WHICH THE LUNCHEON
15 RECESS WAS TAKEN.)

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1 SAN JOSE, CALI FORNIA

2 MARCH 6, 2006.

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4 AFTERNOON SESSI ON:

5 MR. FINKELSTEIN: WE WILL ASK THE NEXT WITNESS TO

6 STEP INSIDE.

7 THE FOREMAN: THE AFTERNOON SESSI ON IS NOW CALLED

8 TO ORDER.

9 BILLY RAY JONES,

10 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTI FIED

11 AS FOLLOWS:

12 THE WITNESS: I DO.

13 EXAMI NATION:

14 BY MR. FINKELSTEIN:

15 Q. GOOD AFTERNOON, MR. JONES. COULD YOU PLEASE STATE

16 YOUR FULL NAME FOR THE RECORD?

- 17 A. YES. BILLY RAY JONES.
- 18 Q. CAN YOU SPELL YOUR NAME FOR THE REPORTER, PLEASE.
- 19 A. B-I-L-L-Y, R-A-Y, J-O-N-E-S.
- 20 Q. MR. JONES, WHERE ARE YOU EMPLOYED?
- 21 A. ALLIED WASTE SERVICES.
- 22 Q. AND WHAT'S YOUR POSITION THERE?
- 23 A. I'M THE DISTRICT MANAGER FOR THE SAN MATEO COUNTY
- 24 OPERATIONS.
- 25 Q. AND HOW LONG HAVE YOU BEEN WORKING FOR ALLIED WASTE
- 26 INDUSTRIES?
- 27 A. SINCE FEBRUARY OF 2003.
- 28 Q. PRIOR TO FEBRUARY OF 2003, WHERE WERE YOU EMPLOYED?

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- 1 A. NORCAL WASTE SYSTEMS, SANTA CLARA COUNTY.
- 2 Q. AND WHAT WAS YOUR POSITION WITH NORCAL WHEN YOU
- 3 LEFT?
- 4 A. GROUP MANAGER.
- 5 Q. AND WHICH GROUP DID YOU MANAGE?
- 6 A. I MANAGED THE SANTA CLARA AND SAN MATEO OPERATIONS,
- 7 AS WELL AS LOS ANGELES COUNTY.
- 8 Q. SO THAT WOULD INCLUDE THE CITY OF SAN JOSE?
- 9 A. YES, IT WOULD.
- 10 Q. WHEN DID YOU FIRST BECOME GROUP MANAGER FOR NORCAL?
- 11 A. I BELIEVE THAT WAS IN 1998.
- 12 Q. AND WHAT WAS YOUR POSITION BEFORE BECOMING A GROUP
- 13 MANAGER?
- 14 A. I WAS A GENERAL MANAGER FOR NORCAL IN VACAVILLE,

15 CALIFORNIA.

16 Q. AND IN THE YEAR 2000, DID THE CITY OF SAN JOSE
17 ISSUE A REQUEST FOR PROPOSALS FOR RECYCLE PLUS SERVICES?

18 A. I BELIEVE THAT CAME OUT IN EARLY 2000, YES.

19 Q. AND DID NORCAL SUBMIT A PROPOSAL IN RESPONSE TO THE
20 RFP?

21 A. YES, WE DID.

22 Q. DID YOU WORK ON THE NORCAL PROPOSAL?

23 A. YES.

24 Q. WHAT WAS YOUR ROLE IN THE NORCAL, IN PUTTING
25 TOGETHER THE NORCAL PROPOSAL?

26 A. I WAS IN CHARGE OF THE TEAM THAT PUT IT TOGETHER,
27 SO I HAD DIFFERENT MANAGERS WITHIN NORCAL AND CONSULTANTS
28 THAT HELPED PUT TOGETHER THE ACTUAL RESPONSE.

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1 Q. I ASSUME IN ORDER TO PUT THAT PROPOSAL TOGETHER YOU
2 HAD TO FIRST READ AND BECOME FAMILIAR WITH THE CONTENTS OF
3 THE RFP.

4 A. YES.

5 Q. BECAUSE THAT'S WHAT YOU WERE RESPONDING TO,
6 CORRECT?

7 A. CORRECT.

8 Q. UNDER THE RFP, WHEN WERE SERVICES SUPPOSED TO
9 COMMENCE?

10 A. I BELIEVE IT WAS JULY 1, 2002.

11 Q. OKAY. AND ACCORDING TO THE RFP, WERE CONTRACTORS
12 REQUIRED TO DEMONSTRATE A COMMITMENT TO WORKER RETENTION?

- 13 A. I BELIEVE THAT WAS ONE OF THE REQUIREMENTS, YES.
- 14 Q. NOW, DID YOU UNDERSTAND WORKER RETENTION TO REQUIRE
- 15 CONTRACTORS TO PAY THE EXACT SAME WAGES AND BENEFITS THAT
- 16 WORKERS HAD BEEN RECEIVING AT THE EXISTING CONTRACTORS?
- 17 A. NOT NECESSARILY, NO.
- 18 Q. SO WHAT DID YOU UNDERSTAND WORKER RETENTION TO
- 19 MEAN?
- 20 A. I UNDERSTOOD WORKER RETENTION TO MEAN THAT
- 21 EMPLOYEES OF ANY DISPLACED CONTRACTORS WOULD BE OFFERED
- 22 POSITIONS WITH THE NEW CONTRACTOR FIRST, AND THEN AFTER YOU
- 23 FILL ALL YOUR SPOTS, YOU HAD TO GO OUTSIDE OF THAT FOR YOUR
- 24 WORKERS.
- 25 Q. DID WORKER RETENTION REQUIRE THAT DISPLACED MRF
- 26 WORKERS CONTINUE BEING REPRESENTED BY THE UNION REPRESENTING
- 27 THEM AT THEIR FORMER EMPLOYER?
- 28 A. I DON'T BELIEVE IT DID.

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- 1 Q. DID THE RFP CONTAIN A PROVISION REQUIRING
- 2 CONTRACTORS TO DEMONSTRATE A COMMITMENT TO LABOR PEACE?
- 3 A. I BELIEVE IT DID, YES.
- 4 Q. WHAT DID YOU UNDERSTAND LABOR PEACE TO REFER TO?
- 5 A. UH -- LABOR PEACE, I BELIEVE, REFERRED TO WORK WITH
- 6 CURRENT UNIONS OR OTHER ORGANIZED LABOR GROUPS THAT MIGHT
- 7 COME INTO PLAY.
- 8 Q. DID YOU UNDERSTAND LABOR PEACE TO REQUIRE THAT A
- 9 NEW CONTRACTOR HAD TO HONOR EXISTING COLLECTIVE BARGAINING
- 10 AGREEMENTS WITH OLD CONTRACTORS?

11 A. I DON'T BELIEVE THAT -- I THINK THAT'S ULTIMATELY
12 WHAT IT MEANT, BUT I DON'T BELIEVE THAT'S WHAT I FELT IT
13 MEANT INITIALLY.

14 Q. IN THE RFP?

15 A. CORRECT.

16 Q. AND WHEN YOU READ THE RFP, DID YOU CONSTRUE LABOR
17 PEACE TO MEAN THAT DISPLACED WORKERS HAD TO AUTOMATICALLY
18 CONTINUE BEING REPRESENTED BY THE SAME UNION?

19 A. NOT NECESSARILY.

20 Q. NOW, WHY DON'T WE SHOW YOU EXHIBIT 4 FOR A MOMENT.
21 CAN YOU TAKE A LOOK AT EXHIBIT 4 AND TELL US IF YOU
22 RECOGNIZE THAT DOCUMENT?

23 A. IT APPEARS TO BE THE RFP FROM SAN JOSE.

24 Q. THE ONE THAT YOU WORKED ON ON BEHALF OF NORCAL,
25 CORRECT?

26 A. I BELIEVE SO, YES.

27 Q. NOW --

28 A. I'M SORRY, THIS IS OUR RESPONSE. THIS ISN'T THE

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1 ACTUAL RFP.

2 Q. THAT'S YOUR RESPONSE TO THE RFP?

3 A. YES.

4 Q. THAT'S WHAT I THOUGHT YOU SAID WHEN I SAID THAT'S
5 THE ONE YOU WORKED ON. THE RFP IS BEING PRESENTED BY THE
6 CITY TO INVITE CONTRACTORS TO PRESENT A PROPOSAL?

7 A. CORRECT. THAT WAS OUR RESPONSE TO THAT DOCUMENT.

8 Q. IS IT TRUE THAT NORCAL'S PROPOSAL CONTEMPLATED

9 USING A CONTRACTOR, CWS, TO DO THE RECYCLING PORTION OF THE
10 CONTRACT?

11 A. CORRECT. THEY WERE A SUBCONTRACTOR TO DO THE
12 PROCESSING OF RECYCLABLES, NOT THE ACTUAL COLLECTION.

13 Q. THE SORTING OF THE RECYCLABLES?

14 A. CORRECT.

15 Q. THAT TAKES PLACE AT WHAT IS KNOWN IN THE INDUSTRY
16 AS A MATERIALS RECOVERY FACILITY?

17 A. CORRECT.

18 Q. PEOPLE WHO DO THE WORK ARE CALLED MRF WORKERS?

19 A. YES.

20 Q. SO NORCAL'S PROPOSAL IN RESPONSE TO THE RFP
21 INCLUDED SUBCONTRACTING OUT THE SORTING WORK TO ANOTHER
22 COMPANY, CWS, CORRECT?

23 A. CORRECT.

24 Q. THAT'S -- CWS STANDS FOR CALIFORNIA WASTE
25 SOLUTIONS?

26 A. CORRECT.

27 Q. THAT WAS A COMPLETELY SEPARATE COMPANY FROM NORCAL?

28 A. CORRECT.

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1 Q. IT WAS NOT A SUBSIDIARY OR RELATED COMPANY?

2 A. CORRECT.

3 Q. CWS'S PRESIDENT WAS A FELLOW NAMED DAVID DUONG?

4 A. CORRECT.

5 Q. AND AT THE TIME THAT THE PROPOSAL WAS SUBMITTED,
6 CWS WAS A COMPANY THAT HAD AN OPERATION GOING IN OAKLAND,

- 7 RIGHT?
- 8 A. YES, I BELIEVE SO.
- 9 Q. THEY HAD A SORTING FACILITY IN OAKLAND, CORRECT?
- 10 A. YES.
- 11 Q. AT THE TIME THE PROPOSAL WAS SUBMITTED TO THE CITY
- 12 OF SAN JOSE, CWS DIDN'T HAVE AN OPERATION GOING ON IN
- 13 SAN JOSE, CORRECT?
- 14 A. TO THE BEST OF MY KNOWLEDGE, THEY HAD NO OPERATION
- 15 IN SANTA CLARA COUNTY.
- 16 Q. WHAT WAS CONTEMPLATED IF NORCAL WAS SUCCESSFUL IN
- 17 GETTING THE CONTRACT IS THAT CWS WOULD CREATE A SORTING
- 18 FACILITY OR MRF IN SAN JOSE?
- 19 A. CORRECT.
- 20 Q. AS PART OF THE PROPOSAL, EXHIBIT 4 THAT WAS
- 21 SUBMITTED TO THE CITY, IT WAS STATED THAT CWS HAD AN
- 22 EXISTING COLLECTIVE BARGAINING AGREEMENT WITH THE ILWU,
- 23 CORRECT?
- 24 A. CORRECT.
- 25 Q. SOMETIMES REFERRED TO AS THE LONGSHOREMEN'S UNION,
- 26 RIGHT?
- 27 A. YES.
- 28 Q. AND IT WAS CONTEMPLATED AND STATED IN THE RESPONSE

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- 1 THAT CWS WOULD BE EXTENDING THE ILWU COLLECTIVE BARGAINING
- 2 AGREEMENT TO THIS NEW FACILITY IN SAN JOSE IF NORCAL WAS
- 3 AWARDED THE CONTRACT, RIGHT?
- 4 A. I BELIEVE THAT WAS STATED IN THE RESPONSE, YES.

5 Q. AS A MATTER OF FACT, THE PROPOSAL THAT YOU WORKED
6 ON INCLUDES A COPY OF THE WRITTEN AGREEMENT BETWEEN NORCAL
7 AND CWS FOR RECYCLING SERVICES, CORRECT?

8 A. YES, I BELIEVE THAT WAS INCLUDED.

9 Q. TAKE A LOOK AT APPENDIX I OF THE PROPOSAL AND SEE
10 IF THE AGREEMENT IS IN THERE.

11 A. YES.

12 Q. APPENDIX I CONTAINS A COPY OF THE NORCAL/CWS
13 AGREEMENT?

14 A. YES.

15 Q. DO YOU RECALL WHAT THE FINANCIAL TERMS OF THE
16 ORIGINAL NORCAL/CWS AGREEMENT WAS?

17 A. THE INITIAL TERMS WERE THAT WE WERE TO DELIVER THE
18 RECYCLABLES TO, WE BEING NORCAL, IN COLLECTION VEHICLES TO
19 THE CWS FACILITY LOCATED IN SAN JOSE, AND THEY WOULD CHARGE
20 US ZERO TO DO THAT. THEY WOULD IN TURN KEEP THE REVENUE
21 FROM THE SALE OF MATERIAL AND THAT NORCAL WOULD COVER THE
22 DISPOSAL COMPONENT, WHAT IS CALLED RESIDUALS. THAT'S
23 MATERIAL THAT'S NOT RECYCLED, COMES OFF AT THE END OF THE
24 LINE.

25 Q. THE RESIDUALS ARE NONRECYCLED MATERIALS THAT ARE
26 SOMETIMES MIXED IN WITH RECYCLABLES?

27 A. YES.

28 Q. BASICALLY, NO MONEY WAS GOING TO GO TO NORCAL, FROM

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1 NORCAL TO CWS, UNDER THE ORIGINAL AGREEMENT?

2 A. THAT'S CORRECT.

- 3 Q. CWS WAS NOT GOING TO PAY NORCAL MONEY EITHER UNDER
4 THE ORIGINAL AGREEMENT?
- 5 A. CORRECT.
- 6 Q. SO HOW WAS CWS SUPPOSED TO MAKE A PROFIT UNDER THIS
7 ORIGINAL AGREEMENT?
- 8 A. FROM THE SALE OF THE MATERIALS WOULD BE MY
9 ASSUMPTION, I'M NOT NECESSARILY SURE.
- 10 Q. OKAY. I TAKE IT ONCE THE SINGLE STREAM OF
11 RECYCLABLES IS SORTED INTO INDIVIDUAL COMPONENTS, THOSE
12 COULD BE RESOLD, THERE IS A MARKET FOR THAT?
- 13 A. GENERALLY, YES. THE MARKETS GO UP AND DOWN, BUT
14 GENERALLY THERE ARE MARKETS.
- 15 Q. DO YOU KNOW WHETHER OR NOT CWS COULD HAVE USED
16 TEAMSTERS INSTEAD OF LONGSHOREMEN UNDER THAT ARRANGEMENT AND
17 STILL TURNED A PROFIT UNDER THE AGREEMENT?
- 18 A. I HAVE NO IDEA.
- 19 Q. OKAY. BUT IN ANY EVENT, IT WAS CONTEMPLATED
20 ORIGINALLY THAT CWS WAS GOING TO CONTINUE TO USE
21 LONGSHOREMEN AND NOT TEAMSTERS, RIGHT?
- 22 A. YES.
- 23 Q. NOW, IS THERE A DATE THAT TELLS US WHEN THAT
24 PROPOSAL WAS SUBMITTED TO THE CITY?
- 25 A. I BELIEVE THERE'S A DATE ON THE FRONT. I BELIEVE
26 WE DELIVERED IT ON JULY 14, 2000.
- 27 Q. OKAY. SHORTLY BEFORE THAT PROPOSAL WAS DELIVERED,
28 DID NORCAL ENTER INTO AN AGREEMENT WITH THE TEAMSTER'S

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1 UNION, THE SANITARY WORKERS LOCAL 350, IF YOU RECALL?

2 A. I'M NOT SURE I UNDERSTAND THE QUESTION, BUT NORCAL
3 AT THE TIME HAD HAD A NUMBER OF AGREEMENTS WITH TEAMSTER'S
4 LOCAL 350.

5 Q. FAIR ENOUGH. SHORTLY BEFORE THAT PROPOSAL WAS
6 DELIVERED TO THE CITY ON OR ABOUT JULY 14, 2000, DID NORCAL
7 ENTER INTO SOME M. O. U. WITH THE TEAMSTERS TO, THAT WOULD
8 COVER ANY WORKERS HIRED BY NORCAL TO FULFILL ITS OBLIGATION
9 UNDER THE CONTRACT THAT NORCAL WAS SEEKING FROM THE CITY?

10 A. WE ACTUALLY ENTERED INTO AN M. O. U. WITH THE
11 TEAMSTERS PRIOR TO TURNING THIS IN. I DON'T RECALL THE
12 EXACT DATE, BUT I BELIEVE IT WAS PRETTY EARLY IN THE
13 PROCESS.

14 Q. LET ME HAVE YOU LOOK AT EXHIBIT 71. CAN YOU TELL
15 US WHAT EXHIBIT 71 IS?

16 A. THIS IS AN M. O. U. BETWEEN NORCAL WASTE SYSTEMS AND
17 SANITARY TRUCK DRIVERS AND HELPERS LOCAL 350, WHICH WAS THE
18 LOCAL TEAMSTERS IN SANTA CLARA COUNTY COVERING THE DISPLACED
19 WORKERS FROM WASTE MANAGEMENT AND/OR GREEN TEAM IN SAN JOSE.

20 Q. WHO WOULD BE THE FIRST WORKERS TO BE HIRED BY
21 NORCAL IN THE EVENT NORCAL WAS SUCCESSFUL IN GETTING THE
22 CONTRACT?

23 A. POTENTIALLY THERE WAS ANOTHER, OR TWO OTHER GROUPS
24 OF WORKERS FROM BFI OF SANTA CLARA COUNTY, AND FROM A
25 COMPANY CALLED GREEN WASTE RECOVERY, BOTH OF WHICH WERE NOT
26 COLLECTIVELY BARGAINED FOR THAT WOULD ALSO HAVE BEEN IN THE
27 POOL OF DISPLACED WORKERS, POTENTIALLY.

28 Q. LOOKING AT PAGE TWO, THE SIGNATURE ON THE LEFT

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1 ABOVE THE PRINTED WORDS BILL JONES, DO YOU KNOW WHOSE
2 SIGNATURE THAT IS?

3 A. I DO.

4 Q. WHOSE?

5 A. THAT' S MINE.

6 Q. DID YOU SIGN IT ON THE DATE INDICATED, JULY 11,
7 2000?

8 A. THAT WOULD BE MY ASSUMPTION, YES.

9 Q. DO YOU HAVE ANY REASON TO BELIEVE IT WAS POSTDATED
10 OR PREDATED?

11 A. NO.

12 Q. DO YOU KNOW WHO SIGNED THE DOCUMENT ON THE RIGHT?

13 A. YES.

14 Q. WHO IS THAT?

15 A. BOB MORALES. HE' S THE SECRETARY-TREASURER FOR
16 TEAMSTER' S LOCAL 350.

17 Q. NOW YOU TOLD US THAT THE NORCAL PROPOSAL WAS
18 SUBMITTED TO THE CITY ON JULY 14, 2000 OR THEREABOUTS?

19 A. RIGHT.

20 Q. THIS WOULD HAVE BEEN SIGNED JUST A FEW DAYS BEFORE
21 THE PROPOSAL WAS SUBMITTED, CORRECT?

22 A. YES.

23 Q. AND WHY DID NORCAL AND YOU ENTER INTO THIS
24 AGREEMENT AT THAT TIME?

25 A. AT THAT POINT IN TIME, QUITE FRANKLY, WE BELIEVED
26 THIS WAS A GOOD WAY TO DEMONSTRATE LABOR PEACE.

27 Q. SO YOU DID THIS TO, I GUESS, SCORE POINTS WITH THE
28 CITY IS ONE WAY TO PUT IT?

1 A. WE DID THIS TO HELP BEEF UP OUR PROPOSAL,
2 CERTAINLY, AND TO DEMONSTRATE AGAIN THAT WE HAD COMPLIANCE
3 WITH THE LABOR PEACE AGREEMENT AS WE UNDERSTOOD IT AT THE
4 TIME.

5 Q. AS A MATTER OF FACT, WAS THAT COPY OF THE AGREEMENT
6 INCLUDED IN THE PROPOSAL?

7 A. I BELIEVE IT WAS, YES.

8 Q. DO YOU KNOW WHICH APPENDIX THAT IS?

9 A. I DON' T, BUT I BELIEVE WE INCLUDED IT.

10 Q. WHY DON' T YOU TAKE A LOOK AT APPENDIX G AS IN
11 GEORGE.

12 A. THAT' S IT.

13 Q. SO APPENDIX G OF NORCAL' S PROPOSAL CONTAINS A COPY
14 OF THIS AGREEMENT BETWEEN NORCAL AND THE LOCAL TEAMSTER' S
15 UNION?

16 A. CORRECT.

17 Q. AND WHO DRAFTED THIS AGREEMENT, BY THE WAY?

18 A. I BELIEVE THEY DID, THE TEAMSTERS DID, I BELIEVE.

19 Q. BEFORE SIGNING THIS AGREEMENT, DID YOU DISCUSS THE
20 NEED FOR THIS AGREEMENT WITH ANYONE AT NORCAL?

21 A. I THINK WE HAD SOME DISCUSSIONS ABOUT IT IN SOME OF
22 OUR PLANNING SESSIONS. I CAN' T RECALL SPECIFICALLY.

23 Q. WERE YOU AT A LEVEL SUFFICIENTLY HIGH AT NORCAL
24 THAT YOU COULD SIGN THIS DOCUMENT WITHOUT SPEAKING TO ANYONE
25 HIGHER THAN YOU IN THE HIERARCHY?

26 A. UH -- I COULD HAVE, UNDER THE LEVELS OF AUTHORITY,
27 BUT I GENERALLY WOULD NOT HAVE DONE THAT.

28 Q. WHO DID YOU REPORT TO AT NORCAL?

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1 A. ARCHIE HUMPHREY, THE CHIEF OPERATING OFFICER.

2 Q. DO YOU KNOW WHO MR. HUMPHREY REPORTED TO?

3 A. I BELIEVE HE REPORTED TO MIKE SANGIACOMO, THE
4 PRESIDENT AND CEO.

5 Q. I TAKE IT YOU AND NORCAL FELT THAT THIS WAS, THIS
6 ENTERING INTO THIS AGREEMENT WOULD HELP IN YOUR EFFORT TO
7 SECURE A CONTRACT WITH THE CITY.

8 A. WE DEFINITELY FELT IT WOULD BE BENEFICIAL, YES.

9 Q. PRIOR TO ENTERING INTO THIS AGREEMENT, HAD YOU HAD
10 DISCUSSIONS WITH MR. MORALES?

11 A. ABOUT --

12 Q. ABOUT THE NEED TO ENTER INTO SOME KIND OF AGREEMENT
13 LIKE THIS?

14 A. UH -- I BELIEVE IT CAME UP. WE HAD OPPORTUNITIES
15 TO TALK A LOT BECAUSE HE REPRESENTED A NUMBER OF MY
16 EMPLOYEES AT THE TIME, BUT I BELIEVE HE AND I DID TALK ABOUT
17 PUTTING TOGETHER SUCH AN M. O. U. TO SHOW THAT WE HAD A
18 WORKING RELATIONSHIP AND THAT WE WERE COMMITTED TO LABOR
19 PEACE.

20 Q. DID MR. MORALES SUGGEST TO YOU THAT ENTERING INTO
21 THIS AGREEMENT WOULD HELP NORCAL GET THE CONTRACT?

22 A. UH -- I DON'T BELIEVE HE EVER SAID IT WOULD HELP US
23 GET IT.

24 Q. DID HE SUGGEST THE OPPOSITE, THAT NOT ENTERING INTO
25 THE AGREEMENT WOULD CAUSE PROBLEMS FOR NORCAL WITH THE CITY
26 COUNCIL?

27 A. HE DID NOT.

28 Q. OKAY. NOW, CAN YOU TELL US GENERALLY WHAT THIS

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1 AGREEMENT DOES?

2 A. GENERALLY WHAT IT DOES IS IT SAYS THAT WE WILL
3 RECOGNIZE LOCAL 350 AS THE SOLE BARGAINING UNIT OR SOLE
4 BARGAINING LOCAL FOR THESE EMPLOYEES, SHOULD THEY COME TO
5 WORK FOR US.

6 Q. DOES IT DO ANYTHING ELSE?

7 A. IT'S BEEN A WHILE. I THINK THERE'S SOMETHING ABOUT
8 A CARD CHECK, ISN'T THERE? ISN'T THAT HOW THEY
9 DETERMINE -- OH, THERE'S SOME LANGUAGE THAT SAYS THAT WE
10 WILL AGREE TO ADOPT THE CURRENT CBA WITH THE DISPLACED
11 COMPANY.

12 Q. C-B-A?

13 A. COLLECTIVE BARGAINING UNIT, WHILE WE NEGOTIATE A
14 NEW ONE.

15 Q. ADOPTING THE CURRENT CBA MEANS THAT NORCAL IS
16 OBLIGATING ITSELF TO PAY THE CURRENT WAGES AND BENEFITS OF
17 THE DISPLACED WORKERS?

18 A. YES.

19 Q. DOES THE AGREEMENT ALSO HAVE A PROVISION ABOUT
20 SENIORITY?

21 A. IT DOES.

22 Q. WHAT DOES THAT PROVISION SAY?

23 A. THIS IS THE PROVISION THAT ESSENTIALLY SAYS THAT WE
24 WILL GIVE, WE WILL FIRST GO TO THESE DISPLACED EMPLOYEES TO

25 OFFER THEM JOBS, AND WE WON'T OFFER A POSITION TO ANYBODY
26 OUTSIDE OF THAT POOL OF WORKERS UNTIL WE HAVE EXHAUSTED THE
27 ENTIRE SENIORITY, WHICH IS THEIR TERM FOR THAT GROUP OF
28 WORKERS.

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1 Q. DOESN'T IT ALSO SAY THAT BASICALLY THE DISPLACED
2 WORKERS WILL ENJOY SENIORITY STATUS DETERMINED BY THEIR
3 FIRST DATE OF HIRE AT THE PRIOR CONTRACTOR?

4 A. I DON'T RECALL IF THAT'S IN HERE SPECIFICALLY.

5 Q. WHY DON'T YOU TAKE A LOOK AND SEE IF IT IS. LOOK
6 AT PARAGRAPH FOUR ON PAGE TWO.

7 A. RIGHT. YES, IT DOES SAY THAT.

8 Q. IN OTHER WORDS, ORDINARILY WHEN A COMPANY SUCH AS
9 NORCAL OR ANYONE ELSE HIRES A NEW EMPLOYEE, THE SENIORITY
10 STARTS FROM THE DATE OF HIRE BY NORCAL, RIGHT?

11 A. GENERALLY, YES.

12 Q. WHAT THIS AGREEMENT SAYS IS THAT THIS IS NOT GOING
13 TO HAPPEN WITH THESE EMPLOYEES, THEIR SENIORITY WILL BE
14 DETERMINED BY THE ORIGINAL DATE OF HIRE BY THE PRIOR
15 CONTRACTOR, CORRECT?

16 A. OR THE CONTRACTOR PRIOR TO THAT, DEPENDING ON HOW
17 LONG THEY HAVE BEEN IN SAN JOSE.

18 Q. WHENEVER THEY FIRST STARTED WORKING AS A GARBAGE
19 COLLECTOR OR CONTRACTOR IN SAN JOSE, THAT ORIGINAL DATE IS
20 GOING TO BE THEIR SENIORITY?

21 A. CORRECT.

22 Q. HOW DOES THE WORKER SENIORITY DATE AFFECT THE

23 WORKER' S RIGHTS IN THE MATTER?

24 A. IN THIS CASE, IF I RECALL CORRECTLY, IT AFFECTED
25 THEIR ACCRUAL OF VACATION DAYS, IN TERMS OF HOW MANY DAYS
26 THEY RECEIVED, THEIR ABILITY TO BID FOR ROUTES IN ORDER, THE
27 FIRST GUY GETS SELECTED FIRST, AND I WANT TO SAY THE
28 SELECTION OF VACATION WEEKS DURING THE YEAR WAS ALSO

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1 AFFECTED BY THAT.

2 Q. SO THERE ARE A NUMBER OF BENEFITS TO THE TEAMSTER
3 MEMBERS WHO WOULD BE SUBJECT TO THIS AGREEMENT, CORRECT?

4 A. CORRECT.

5 Q. WHAT DID NORCAL GET OUT OF THIS AGREEMENT?

6 A. WELL, AGAIN, NORCAL WAS ABLE TO DEMONSTRATE LABOR
7 PEACE. I WOULD POINT OUT THAT AS I RECALL, IT' S BEEN A
8 WHILE, BUT AS I RECALL, THE ITEM IN NUMBER FOUR WAS ALSO
9 PART OF THE COMPANY' S WORKER RETENTION OR CITY' S RETENTION
10 PROCESS. YOU HAD TO USE THAT INITIAL DATE.

11 Q. FOUR WASN' T REALLY --

12 A. IT REALLY WASN' T.

13 Q. HOW ABOUT RECOGNIZING THE CURRENT CBA OR COLLECTIVE
14 BARGAINING GROUPS?

15 A. I DON' T BELIEVE THAT WAS A REQUIREMENT OF
16 RETENTION.

17 Q. THAT WAS SOMETHING EXTRA?

18 A. YES, AND I BELIEVE THAT WAS A BENEFIT FOR US.

19 Q. NOW, I TAKE IT HAVING WORKED ON PUTTING TOGETHER
20 THE PROPOSAL, YOU WERE VERY INTERESTED TO SEE WHETHER OR NOT

- 21 THE CITY WOULD AWARD THE CONTRACT TO NORCAL, CORRECT?
- 22 A. YES.
- 23 Q. WHY DON'T WE HAVE YOU TAKE A LOOK AT EXHIBIT 5. IS
- 24 THAT A DOCUMENT THAT YOU SAW BACK IN THE YEAR 2000?
- 25 A. I BELIEVE SO, YES.
- 26 Q. AND I'LL BET YOU WERE HAPPY TO SEE THIS DOCUMENT.
- 27 A. I THINK I WAS.
- 28 Q. WHAT IS THAT DOCUMENT?

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- 1 A. THIS IS THE STAFF REPORT FROM THE ENVIRONMENTAL
- 2 SERVICES DEPARTMENT TO THE CITY COUNCIL IN SAN JOSE FOR AN
- 3 AGENDA ITEM THAT WOULD RECOMMEND THAT NORCAL BE AWARDED
- 4 THREE OF THE SIX COMPONENTS OF THE RECYCLE PLUS CONTRACT.
- 5 Q. OKAY. AND AT THE TIME THAT RECOMMENDATION WAS
- 6 MADE, DID YOU SEE A COPY OF IT WHEN IT CAME OUT?
- 7 A. I BELIEVE I DID, YES.
- 8 Q. THAT WAS BEFORE THE FIRST CITY COUNCIL VOTE ON THE
- 9 MATTER?
- 10 A. UH -- YEAH. I BELIEVE I SAW IT WHEN IT BECAME A
- 11 PUBLIC DOCUMENT.
- 12 Q. DO YOU KNOW WHEN IT BECAME A PUBLIC DOCUMENT?
- 13 A. IT'S TYPICALLY A WEEK OR SO IN ADVANCE OF THE
- 14 MEETING.
- 15 Q. I'M SORRY, YOU HAVE TO SLOW DOWN.
- 16 A. SORRY. TYPICALLY IN SAN JOSE IT'S A WEEK OR TWO
- 17 BEFORE THE ACTUAL COUNCIL MEETING DATE, BUT I DON'T RECALL
- 18 IN THIS INSTANCE.

19 Q. NOW, AT THE TIME THAT STAFF RECOMMENDATION FOR
20 NORCAL CAME OUT, WAS IT STILL CONTEMPLATED THAT CWS WOULD BE
21 USING LONGSHOREMEN?

22 A. YES.

23 Q. WAS THERE ANYTHING IN THE STAFF RECOMMENDATION THAT
24 IN ANY WAY SUGGESTED THAT AS A CONDITION OF RECEIVING THE
25 CONTRACT CWS HAD TO SWITCH TO TEAMSTERS?

26 A. NOT THAT I RECALL, NO.

27 Q. DO YOU RECALL THAT THE FIRST CITY COUNCIL VOTE ON
28 THE CONTRACT WAS ON A TUESDAY, OCTOBER 10, 2000?

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1 A. THAT SOUNDS RIGHT.

2 Q. AND PRIOR TO THE FIRST CITY COUNCIL VOTE ON
3 TUESDAY, OCTOBER 10, 2000, DID ANYONE FROM THE ENVIRONMENTAL
4 SERVICES DEPARTMENT SUGGEST IN ANY WAY THAT CWS SHOULD USE
5 TEAMSTERS INSTEAD OF LONGSHOREMEN?

6 A. NOT THAT I RECALL, NO.

7 Q. DO YOU RECALL THAT NORCAL SENT ONE OR MORE LETTERS
8 TO THE MAYOR OF SAN JOSE SHORTLY BEFORE THE FIRST VOTE ON
9 OCTOBER 10, 2000?

10 A. YES.

11 Q. WHY DON'T WE START WITH EXHIBIT 7. HAVE YOU SEEN
12 EXHIBIT 7 BEFORE?

13 A. I BELIEVE I HAVE. I'M JUST LOOKING, TRYING TO
14 REFRESH MY MEMORY.

15 Q. TAKE AS MUCH TIME AS YOU NEED.

16 A. YES, OKAY.

17 Q. YOU'VE SEEN THAT BEFORE?

18 A. YES.

19 Q. JUST BRIEFLY TELL US WHAT EXHIBIT 7 IS.

20 A. EXHIBIT 7 IS A LETTER DATED OCTOBER 4, 2000, FROM
21 MIKE SANGIACOMO, WHO IS THE PRESIDENT OF NORCAL, TO MAYOR
22 RON GONZALES IN THE CITY OF SAN JOSE, PRIMARILY TALKING
23 ABOUT WORKER RETENTION WITH NOT ONLY NORCAL BUT ALSO
24 CALIFORNIA WASTE SOLUTIONS, OUR SUBCONTRACTOR.

25 Q. DOES EXHIBIT 7 INCLUDE AS AN ATTACHMENT A COPY OF A
26 LETTER FROM NORCAL TO BOB MORALES?

27 A. YES.

28 Q. DATED THE SAME DATE?

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1 A. SAME DATE. ALSO FROM NORCAL.

2 Q. DID YOU PARTICIPATE IN THE DRAFTING OF THIS LETTER?

3 A. YOU KNOW, I DON'T RECALL IF I DID.

4 Q. DID YOU SUGGEST TO MR. SANGIACOMO THAT HE SHOULD
5 SEND SUCH A LETTER TO THE MAYOR ON THAT DATE?

6 A. I DO BELIEVE I WAS INVOLVED IN CONVERSATIONS ABOUT
7 THAT, YES.

8 Q. WHY DON'T YOU TELL US ABOUT THOSE CONVERSATIONS.

9 A. I DON'T RECALL A LOT ABOUT IT, BUT I THINK WE
10 TALKED ABOUT SOME CONCERNS THAT WERE COMING FORTH THAT WE
11 MIGHT NOT HAVE LABOR PEACE, THAT WE MIGHT NOT BE AS
12 COMMITTED TO THE WORKER RETENTION PROCESS AS WE TRULY WERE.
13 SO WE FELT THAT GETTING SOME INFORMATION TO THE CITY'S HANDS
14 SHOWING THAT WE WERE INDEED DEDICATED TO THAT WOULD BE

15 HELPFUL.

16 Q. THE LETTER BEGINS SAYING THE PURPOSE OF THE LETTER
17 IS TO CLARIFY NORCAL'S POSITION ON WORKER RETENTION,
18 CORRECT?

19 A. THIS IS WHICH LETTER?

20 Q. THE LETTER TO THE MAYOR.

21 A. YES.

22 Q. WHY WAS IT NECESSARY, WHY DID NORCAL, WHY DID YOU
23 BELIEVE -- STRIKE THAT. I TAKE IT YOU WERE IN FAVOR OF
24 SENDING SUCH A LETTER TO THE MAYOR, CORRECT?

25 A. YES.

26 Q. AND YOU RECOMMENDED TO MIKE SANGIACOMO THAT HE SEND
27 SUCH A LETTER TO THE MAYOR, CORRECT?

28 A. I'M NOT SURE IF I RECOMMENDED OR JUST AGREED WITH

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1 IT. I DON'T RECALL THE CONVERSATION.

2 Q. WHY DID YOU THINK IT WAS A GOOD IDEA TO SEND THIS
3 LETTER?

4 A. WE HAD BEEN HEARING SOME RUMBLES THAT PERHAPS WE
5 WERE NOT COMMITTED TO THE WORKER RETENTION POLICIES OF THE
6 CITY AND THAT WE WERE NOT COMMITTED TO LABOR PEACE, AND
7 THERE WERE PROBLEMS WITH THE SUBCONTRACTOR. PRIMARILY WE
8 WERE TRYING TO STEM THOSE CONCERNS.

9 Q. WHERE WERE YOU HEARING THOSE RUMBLES?

10 A. VARIOUS FOLKS. TEAMSTERS, FOR EXAMPLE.

11 Q. MR. MORALES?

12 A. MR. MORALES ON OCCASION. AND WE HAD HEARD FROM

13 SOME OTHER PEOPLE THAT WORK WITH US THAT BOB HAD INTERACTION
14 WITH, BOB MORALES, HAD INTERACTION WITH THE CITY, STAFF,
15 PRIMARILY COUNCIL LEVEL, THAT THERE WERE CONCERNS BEING
16 VOICED.

17 Q. THE CONCERN HAD TO DO WITH CWS PROPOSING TO USE
18 LONGSHOREMEN INSTEAD OF TEAMSTERS?

19 A. CORRECT.

20 Q. AND HAD MR. MORALES EXPRESSED TO YOU DIRECTLY HIS
21 DISPLEASURE WITH THE PROSPECT OF CWS OPENING UP A MRF
22 FACILITY IN SAN JOSE AND POPULATING IT WITH LONGSHOREMEN
23 INSTEAD OF TEAMSTERS?

24 A. YES.

25 Q. WHAT DID HE SAY -- WHEN DID HE TELL YOU THAT, ON
26 MORE THAN ONE OCCASION?

27 A. OH, YEAH. I THINK IT WAS. I COULDN'T BE SPECIFIC
28 AS TO DATES.

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1 Q. OKAY, BUT PRIOR TO OCTOBER 4?

2 A. I BELIEVE SO, YES.

3 Q. I GUESS WHAT I'M GETTING AT IS PART OF THE REASON
4 FOR THE LETTER WAS TO RESPOND TO ISSUES THAT MR. MORALES WAS
5 RAISING, AT LEAST WITH YOU, CORRECT?

6 A. I THINK MR. MORALES WAS THE PRIMARY PERSON RAISING
7 THEM, AND I THINK THERE WERE SOME OTHERS AT SOUTH BAY LABOR
8 COUNCIL WHO WERE RAISING ISSUES AS WELL.

9 Q. WHO AT THE SOUTH BAY LABOR COUNCIL?

10 A. I RECALL AMY DEAN WAS CONCERNED. SHE WAS, I'M NOT

11 SURE WHAT HER TITLE WAS, SHE WAS ESSENTIALLY THE LEADER OF
12 SOUTH BAY LABOR COUNCIL AT THAT TIME.

13 Q. FOR THOSE OF US WHO ARE NOT POSSIBLY AS FAMILIAR
14 WITH LOCAL POLITICAL MATTERS IN SAN JOSE, COULD YOU TELL THE
15 JURORS YOUR UNDERSTANDING OF WHAT THE SOUTH BAY LABOR
16 COUNCIL IS?

17 A. MY UNDERSTANDING IS THAT THE SOUTH BAY LABOR
18 COUNCIL IS A SORT OF A CONSORTIUM OF UNIONS AND COLLECTIVE
19 BARGAINING AGENTS THAT INCLUDES THE TEAMSTERS AND SOME OTHER
20 GROUPS, AND THAT THEY SORT OF POOL THEIR RESOURCES FOR MANY
21 THINGS. FUNDRAISING, POLITICAL ACTIVITIES, JOB TRAINING,
22 THINGS LIKE THAT.

23 Q. IS IT YOUR UNDERSTANDING THEY ARE POLITICALLY
24 ACTIVE, ON THE LOCAL SCENE AT LEAST?

25 A. YES.

26 Q. IN WHAT WAY ARE THEY POLITICALLY ACTIVE, IF YOU
27 KNOW?

28 A. I COULDN'T SAY SPECIFICALLY WHAT THEY DO.

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1 Q. AND NOTWITHSTANDING MR. MORALES' S CONCERNS ABOUT
2 CWS, IN THIS LETTER DOES MR. SANGIACOMO REITERATE WHAT' S IN
3 THE PROPOSAL, NAMELY THAT CWS WILL USE LONGSHOREMEN?

4 A. HE DOES.

5 Q. AND I SEE FROM THE HEADER ON THE LETTER THAT THAT
6 WAS FAXED TO THE MAYOR ON THAT SAME DATE.

7 A. I DON'T KNOW.

8 Q. CAN YOU LOOK AT THE FAX HEADER AT THE TOP OF THE
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9 LETTER?
10 A. YES.
11 Q. IT HAS A DATE OF OCTOBER 4?
12 A. YES, IT DOES. I BELIEVE THAT FAX HEADER IS, IT
13 SAYS TO LOS ALTOS, WHICH WAS WHERE MY OFFICE WAS.
14 Q. DOESN'T IT SAY F-R, FROM?
15 A. FROM NORCAL WASTE SYSTEMS TO LOS ALTOS.
16 Q. I'M SORRY, TO LOS ALTOS. SO IN OTHER WORDS, THIS
17 WAS FAXED DOWN TO YOUR OFFICE?
18 A. YES.
19 Q. DID YOU PERSONALLY DELIVER IT TO THE MAYOR'S
20 OFFICE?
21 A. I DON'T RECALL.
22 Q. YOU DON'T REMEMBER AT ALL HOW THIS MAY HAVE GOTTEN
23 INTO THE HANDS OF THE MAYOR?
24 A. I DON'T.
25 Q. IT IS CLEAR TO YOU -- WAS IT STILL YOUR BELIEF ON
26 OCTOBER 4, 2000, THAT IF NORCAL WERE AWARDED THE CONTRACT,
27 CWS WOULD BE USING LONGSHOREMEN?
28 A. AT THIS POINT, YES.

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1 Q. OKAY. DO YOU KNOW WHETHER OR NOT NORCAL SENT
2 SIMILAR LETTERS ON OR ABOUT OCTOBER 4 TO OTHER MEMBERS OF
3 THE COUNCIL?
4 A. I DON'T RECALL IF WE SENT LETTERS TO ALL THE
5 COUNCILMEMBERS OR NOT, TO BE HONEST WITH YOU.
6 Q. OKAY. IS THERE A REASON THAT THIS LETTER WAS

7 DIRECTED TO THE MAYOR AND NOT OTHER COUNCILMEMBERS?
8 A. NOT THAT I RECALL, NO.
9 Q. OKAY. HAD NORCAL HAD ANY COMMUNICATIONS WITH THE
10 MAYOR BEFORE SENDING THIS LETTER OUT?
11 A. I DON'T RECALL IF WE HAD ANY MEETINGS WITH THE
12 MAYOR'S OFFICE PRIOR TO THIS, OR WITH THE MAYOR.
13 Q. WHAT ABOUT COMMUNICATIONS OTHER THAN MEETINGS,
14 TELEPHONE CALLS, E-MAILS FAXES, LETTERS?
15 A. POSSIBLY, I DON'T RECALL.
16 Q. WHO DO YOU THINK AT NORCAL WOULD PROBABLY BE THE
17 PERSON WHO IS MOST INVOLVED, ACTIVELY INVOLVED IN THIS
18 PROPOSAL PROCESS?
19 A. ME.
20 Q. OKAY. GOOD. WHY DON'T YOU TAKE A LOOK AT EXHIBIT
21 11 NEXT. DO YOU RECOGNIZE EXHIBIT 11?
22 A. YES, THIS IS A LETTER THAT I WROTE TO RON GONZALES.
23 Q. TO WHOSE OFFICE?
24 A. TO MAYOR GONZALES'S OFFICE.
25 Q. WHEN DID YOU WRITE THIS LETTER?
26 A. ON OR ABOUT OCTOBER 5, 2000.
27 Q. AND IS THAT YOUR SIGNATURE AT THE BOTTOM OF PAGE
28 TWO?

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1 A. IT IS.
2 Q. AND WHAT WAS THE PURPOSE OF SENDING THIS LETTER TO
3 MAYOR GONZALES ON OCTOBER 5, 2000?
4 A. IF I RECALL CORRECTLY, ONE OF THE COMPANIES THAT

5 WAS BEING DISPLACED HAD BEGUN LOBBYING VARIOUS MEMBERS OF
6 THE COUNCIL, INCLUDING THE MAYOR, SAYING THAT OUR BID WAS
7 TOO LOW AND WASN'T COMPREHENSIVE, DIDN'T COVER ALL THE
8 POINTS IT NEEDED TO, AND THEY SHOULD TOSS US OUT.

9 Q. WHICH COMPANY WAS THAT?

10 A. I BELIEVE IT WAS WASTE MANAGEMENT THAT WAS
11 PRIMARILY BLOCKING US.

12 Q. HOW DID YOU LEARN THAT?

13 A. WE GOT FEEDBACK FROM PEOPLE ON THE CITY STAFF.

14 Q. WHEN YOU SAY "PEOPLE ON THE CITY STAFF," YOU'RE
15 TALKING ABOUT COUNCIL STAFF, THE MANAGER'S OFFICE, OR WHO?

16 A. COULD HAVE BEEN COUNCIL STAFF, COULD HAVE BEEN ESD,
17 ENVIRONMENTAL SERVICES DEPARTMENT STAFF.

18 Q. IS THERE ANYTHING IN THIS LETTER OF OCTOBER 5,
19 SIGNED BY YOU, THAT IS DIFFERENT SIGNIFICANTLY FROM THE
20 LETTER OF THE DAY BEFORE, FROM MIKE SANGIACOMO ON OCTOBER 4?

21 A. THE PRIMARY DIFFERENCE IS THAT MY LETTER FOCUSES
22 MORE ON NORCAL'S HISTORY IN THE COMMUNITY AND OUR
23 EXPERIENCE, SIZE, AND A LITTLE BIT ABOUT THE RATES THAT
24 WE'RE PROPOSING IN SAN JOSE RELATIVE TO OTHER CITIES THAT
25 ARE SIMILAR.

26 Q. DID NORCAL SEND SIMILAR LETTERS TO OTHER
27 COUNCILMEMBERS?

28 A. I DON'T RECALL.

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1 Q. THERE IS A REFERENCE IN THE LETTER AGAIN TO CWS
2 LONGSHOREMEN?

- 3 A. THERE IS.
- 4 Q. THAT WOULD BE THE NEXT TO THE LAST PARAGRAPH ON
5 PAGE TWO?
- 6 A. YES.
- 7 Q. TEAMSTERS LOCAL 70 DRIVERS IN OAKLAND, CORRECT?
- 8 A. I BELIEVE SO, YES.
- 9 Q. AND THE ILWU REFERS TO THE MRF WORKERS OF OAKLAND?
- 10 A. CORRECT.
- 11 Q. SO IS IT CORRECT THEN THAT ONCE AGAIN, AS OF
12 OCTOBER 5, 2000, IT WAS YOUR BELIEF -- LET ME START THAT
13 QUESTION AGAIN.
- 14 HOW DID YOU DELIVER THIS LETTER TO THE MAYOR?
- 15 A. I DON'T RECALL EXACTLY, BUT I BELIEVE WE HAD THIS
16 ONE HAND DELIVERED, BUT I'M NOT POSITIVE.
- 17 Q. I TAKE IT YOU DID THAT BECAUSE YOU WANTED THE MAYOR
18 TO SEE THAT BEFORE THE UPCOMING TUESDAY, OCTOBER 10 VOTE,
19 CORRECT?
- 20 A. CORRECT.
- 21 Q. SO THIS -- OCTOBER 5, DO YOU RECALL THAT BEING A
22 THURSDAY?
- 23 A. I DON'T RECALL SPECIFICALLY.
- 24 Q. YOU RECALL THE OCTOBER 10 COUNCIL VOTE WAS A
25 TUESDAY, CORRECT?
- 26 A. YES, THEY MEET ON TUESDAYS.
- 27 Q. IF THE VOTE ON OCTOBER 10 WAS A TUESDAY, THE 9TH
28 WOULD HAVE BEEN A MONDAY?

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1 A. OKAY.

2 Q. THE 6TH WOULD HAVE BEEN A FRIDAY?

3 A. OKAY, YES.

4 Q. AND THE 5TH, THE DATE OF THIS LETTER, WOULD HAVE

5 BEEN A THURSDAY?

6 A. ABSOLUTELY.

7 Q. ON THAT THURSDAY, WAS IT YOUR BELIEF THAT CWS WAS

8 GOING TO BE USING LONGSHOREMEN IF NORCAL WAS AWARDED THE

9 CONTRACT?

10 A. YES.

11 Q. DID YOU MEET WITH MAYOR GONZALES AT CITY HALL ON

12 FRIDAY, OCTOBER 6, 2000, THE FRIDAY BEFORE THE TUESDAY VOTE,

13 FIRST TUESDAY VOTE ON THE CONTRACT?

14 A. AS I RECALL, WE HAD A MEETING, YES.

15 Q. DO YOU RECALL WHAT TIME THE MEETING TOOK PLACE?

16 A. I BELIEVE IT WAS AN EARLY AFTERNOON MEETING, ONE OR

17 TWO O' CLOCK.

18 Q. DO YOU RECALL WHERE THE MEETING TOOK PLACE?

19 A. AS I RECALL, IT WAS A CONFERENCE ROOM ON THE SIXTH

20 FLOOR ADJACENT TO HIS OFFICE.

21 Q. THAT WOULD BE THE OLD CITY HALL?

22 A. CORRECT.

23 Q. DO YOU RECALL WHO ARRANGED THE MEETING?

24 A. I DO NOT.

25 Q. DO YOU RECALL WHO ELSE ATTENDED THE MEETING?

26 A. I WAS THERE, I BELIEVE MIKE SANGIACOMO WAS THERE.

27 RON GONZALES, THE MAYOR, WAS THERE. I BELIEVE JOE GUERRA,

28 HIS CHIEF BUDGET AGENT, WAS THERE. I RECALL, I BELIEVE THE

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1 TEAMSTERS WERE THERE, I THINK BOB MORALES WAS THERE. AND I
2 THOUGHT, I THINK REPRESENTATIVES FROM CWS WERE ALSO THERE,
3 DAVID.

4 Q. DAVID DUONG?

5 A. YES, THE PRESIDENT. I KNOW THERE WERE OTHER
6 PEOPLE, BUT I CAN'T RECALL NOW.

7 Q. LET ME MENTION SOME NAMES, MAYBE YOU CAN TELL US IF
8 YOU RECALL WHETHER THEY WERE THERE OR NOT.

9 A. OKAY.

10 Q. JUST A MOMENT. DO YOU KNOW SOMEONE NAMED ED
11 MCGOVERN?

12 A. I DO.

13 Q. WHO IS ED MCGOVERN?

14 A. HE WAS A CONSULTANT THAT WE HIRED AT NORCAL WHILE I
15 WAS THERE.

16 Q. WHAT KIND OF CONSULTANT?

17 A. PRIMARILY A POLITICAL CONSULTANT.

18 Q. WHY DID NORCAL HIRE ED MCGOVERN?

19 A. WE HIRED ED MCGOVERN TO HELP US WITH OUR STRATEGY
20 FOR THE SAN JOSE RFP.

21 Q. SO, TO HELP YOU WIN THE CONTRACT?

22 A. TO HELP OUR STRATEGIES, TO HOPEFULLY WIN, YES.

23 Q. DO YOU KNOW SOMEONE NAMED BARBARA ZEITMAN-OLSEN?

24 A. YES.

25 Q. WHO IS SHE?

26 A. BARBARA ZEITMAN-OLSEN IS ANOTHER CONSULTANT WE
27 HIRED AT NORCAL. SHE HELPED US NOT ONLY IN SAN JOSE BUT IN
28 SOME OTHER JURISDICTIONS AS WELL.

- 1 Q. AND SHE WAS HIRED TO HELP YOU WITH REGARD TO WHAT
2 IN SAN JOSE?
- 3 A. UH -- SORT OF MAKE INROADS INTO THE COMMUNITY, HELP
4 US DETERMINE WHICH ORGANIZATIONS TO SUPPORT, GET OUR NAME
5 OUT THERE, THAT SORT OF THING.
- 6 Q. WAS SHE PRESENT AT THIS MEETING?
- 7 A. NOT THAT I RECALL, NO.
- 8 Q. DO YOU REMEMBER WHETHER ED MCGOVERN ACTUALLY WENT
9 INTO THE CONFERENCE ROOM OR WHETHER HE WAITED OUTSIDE?
- 10 A. I DON'T RECALL.
- 11 Q. DO YOU KNOW ARCHIE HUMPHREY?
- 12 A. YES, HE'S CHIEF OPERATING OFFICER FOR NORCAL.
- 13 Q. AND WAS HE OVER AT THIS MEETING AS WELL?
- 14 A. I DON'T RECALL HIM BEING IN THE ROOM, NO.
- 15 Q. DO YOU KNOW IF HE WAS HANGING AROUND SOMEWHERE ELSE
16 IN THE NEIGHBORHOOD OF CITY HALL WHILE YOU WERE IN THE
17 MEETING?
- 18 A. NOT THAT I RECALL.
- 19 Q. SO THE PERSONS THAT YOU DO RECALL ACTUALLY BEING IN
20 THE CONFERENCE ROOM WITH THE MAYOR WERE YOURSELF AND MIKE
21 SANGIACOMO?
- 22 A. CORRECT.
- 23 Q. MAYOR RON GONZALES AND HIS BUDGET DIRECTOR
24 JOE GUERRA?
- 25 A. CORRECT.
- 26 Q. AND POSSIBLY SOMEONE FROM CWS, BUT YOU'RE NOT SURE?
- 27 A. RIGHT.

28 Q. POSSI BLY DAVI D DUONG?

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1 A. RIGHT.

2 Q. ANYONE ELSE?

3 A. I BELI EVE BOB MORALES.

4 Q. WAS THERE ANYONE FROM SOUTH BAY LABOR COUNCIL

5 ATTENDING THE MEETING?

6 A. NOT THAT I RECALL, NO.

7 Q. SO YOU'RE NOT SAYING THEY WEREN'T THERE OR THEY
8 WERE, YOU JUST DON'T REMEMBER ONE WAY OR THE OTHER?

9 A. I DON'T REMEMBER ONE WAY OR THE OTHER. I RECALL
10 THE MEETING, BUT I DON'T RECALL SPECIFICALLY WHO WAS THERE.

11 Q. DID ANYBODY TAKE NOTES AT THE MEETING?

12 A. NOT THAT I'M AWARE OF.

13 Q. DID SOMETHING HAPPEN AT THIS MEETING THAT CAUSED
14 NORCAL TO ASK CWS TO SWITCH FROM LONGSHOREMEN TO TEAMSTERS?

15 A. I DON'T REMEMBER IF IT HAPPENED SPECIFICALLY AT
16 THAT MEETING, BUT IT HAD BECOME CLEAR TO US.

17 Q. LET'S START WITH MY QUESTION, THERE IS NO NEED TO
18 RUSH, WE'LL TAKE AS MUCH TIME AS WE NEED TO TAKE. LET'S
19 FOCUS ON THE MEETING. DID SOMETHING HAPPEN AT THAT MEETING
20 CAUSING NORCAL TO ASK CWS TO SWITCH FROM LONGSHOREMEN TO
21 TEAMSTERS?

22 A. SPECIFICALLY AT THAT MEETING, NOT THAT I CAN
23 RECALL, ALTHOUGH IT WAS CLEAR TO US I THINK AT THAT POINT
24 THAT THE ILWU WAS NOT GOING TO BE ACCEPTED VERY WELL.

25 Q. BY WHOM?

26 A. BY TEAMSTERS, BY THE LABOR COUNCIL EMPLOYEES, AND
27 POTENTIALLY BY THE CITY. IT MIGHT CAUSE SOME LABOR PEACE
28 ISSUES.

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1 Q. WHEN YOU SAY IT WAS CLEAR TO YOU BY THAT POINT THAT
2 THAT WAS GOING TO BE A PROBLEM, THE DAY BEFORE ON OCTOBER 5,
3 YOU SENT A LETTER TO THE MAYOR WHICH AGAIN REFERENCED CWS
4 USING LONGSHOREMEN, CORRECT?

5 A. CORRECT.

6 Q. SO CAN I ASSUME ON THURSDAY, OCTOBER 5, IT WASN'T
7 CLEAR TO YOU THAT CWS USING LONGSHOREMEN WAS GOING TO BE A
8 PROBLEM, RIGHT?

9 A. I'M NOT SURE THAT'S A CORRECT ASSUMPTION. I THINK
10 WE WERE AT THAT POINT TRYING TO MAKE IT OKAY TO USE ILWU
11 BECAUSE THAT WAS DAVID'S OR CALIFORNIA WASTE SOLUTIONS'S
12 PREFERRED UNION. THAT'S THE UNION THEY HAD THE RELATIONSHIP
13 WITH.

14 Q. AS OF THURSDAY, OCTOBER 5, TO YOUR KNOWLEDGE HAD
15 ANYONE FROM NORCAL ASKED CWS TO SWITCH TO TEAMSTERS?

16 A. NOT THAT I RECALL, NO.

17 Q. THEN THERE'S THE FRIDAY, OCTOBER 6 MEETING WITH THE
18 MAYOR, CORRECT?

19 A. CORRECT.

20 Q. AND DID YOU KNOW THAT ON THE FOLLOWING MONDAY, MIKE
21 SANGIACOMO SIGNED AN AGREEMENT WITH CWS AGREEING TO
22 REIMBURSE CWS FOR THE EXTRA COST OF USING TEAMSTERS AT HIS
23 MRF FACILITY?

24 A. YES.
25 Q. SO CAN WE RULE OUT SOMETHING HAPPENING ON SATURDAY
26 OR SUNDAY BEFORE THAT MONDAY AGREEMENT?
27 A. I'M NOT SURE ABOUT THAT, BUT -- I DON'T KNOW WHAT
28 HAPPENED ON SATURDAY, SO --

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1 Q. THAT LEAVES FRIDAY, OCTOBER 6, CORRECT?
2 A. OKAY.
3 Q. SO WHAT HAPPENED ON FRIDAY, OCTOBER 6 THAT, IF IT
4 DIDN'T HAPPEN AT THE MEETING, THAT CAUSED CWS TO ASK --
5 STRIKE THAT. THAT CAUSED NORCAL TO ASK CWS TO SWITCH TO
6 TEAMSTERS?
7 A. WELL, AS I RECALL, CWS' S PRIMARY ISSUE WAS THE
8 COST.
9 Q. WHAT DO YOU MEAN, COST?
10 A. THE LABOR COST INVOLVED WITH GOING FROM THE ILWU
11 CONTRACT TO THE TEAMSTERS CONTRACT. THEY HAD SOME CONCERN
12 THAT THEY HAD GIVEN US A PROPOSAL FOR THE SUBMITTAL OF OUR
13 PROPOSAL THAT HAD A COST STRUCTURE THAT INCLUDED ILWU WAGES
14 AND BENEFITS, ET CETERA. THEY WERE CONFIRMING THAT THE
15 TEAMSTERS AGREEMENT WOULD CHANGE THOSE NUMBERS, AND
16 THEREFORE CHANGE THE ECONOMICS OF THIS FACILITY FOR THEM.
17 AND I THINK WHAT CAME OUT OF THE MEETING ON FRIDAY
18 WAS THAT IF IN FACT THERE WAS AN INCREASED COST, THAT THE
19 MAYOR AND HIS BUDGET DIRECTOR WOULD SUPPORT US IN GOING TO
20 THE CITY AND TRYING TO GET REIMBURSEMENT FOR THAT.
21 Q. WHEN YOU SAY THAT CAME OUT OF THE MEETING, DID THE

22 MAYOR OR HIS BUDGET DIRECTOR OR BOTH SAY ANYTHING ABOUT
23 THAT?

24 A. UH -- AS I RECALL, AND I DON'T RECALL THE EXACT
25 WORDS, BUT AS I RECALL, WE WERE TOLD THAT THEY WOULD BE
26 SUPPORTIVE OF THAT AS LONG AS WE COULD BACK IT UP.

27 Q. AS LONG AS WHAT?

28 A. AS LONG AS WE COULD BACK IT UP TO SHOW WHAT THE

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1 COST DIFFERENCES WERE, THAT THEY WOULD SUPPORT THAT.

2 Q. DID EITHER THE MAYOR OR HIS BUDGET DIRECTOR
3 INDICATE A PREFERENCE FOR TEAMSTERS VERSUS LONGSHOREMEN?

4 A. I THINK THEIR PREFERENCE WAS FOR LABOR PEACE. AND
5 THEY FELT THAT, I DON'T BELIEVE THEY DID SAY YOU HAVE TO USE
6 THE TEAMSTERS, BUT THEY WANTED TO MAKE SURE THERE WAS LABOR
7 PEACE. AND THEY WERE CONCERNED THAT IF ILWU CAME TO TOWN
8 THAT THAT WOULD NOT CREATE AN ATMOSPHERE OF LABOR PEACE WITH
9 THE TEAMSTERS AND DISPLACED WORKERS, SO THEY WANTED TO MAKE
10 SURE THAT WAS IN PLACE. AND THE CONCERN WAS ECONOMICS ON
11 THE PART OF CWS PRIMARILY, SO THAT THEY OFFERED OR SAID THAT
12 THEY WOULD SUPPORT US IN COMING BACK TO THE CITY AND ASKING
13 FOR MORE MONEY IF WE COULD DOCUMENT IT, ESSENTIALLY.

14 Q. SO IS IT YOUR TESTIMONY, THEN, THAT YOU DID NOT
15 FEEL THAT THE MAYOR WAS PRESSURING YOU, YOU MEANING NORCAL,
16 TO GET CWS TO SIGN WITH THE TEAMSTERS?

17 A. I DON'T THINK THEY WERE PRESSURING US, NO.

18 Q. DID IT SEEM THAT THE MAYOR HAD A PREFERENCE FOR
19 TEAMSTERS VERSUS THE LONGSHOREMEN?

20 A. I DON'T THINK SO. IT APPEARED TO ME HE WAS SIMPLY
21 LOOKING FOR LABOR PEACE; THAT'S HOW I LEFT THE ROOM.

22 Q. WHY WOULD IT HAVE BEEN MORE PEACEFUL FOR CWS TO USE
23 TEAMSTERS INSTEAD OF LONGSHOREMEN?

24 A. WAGES AND BENEFITS, NEW AGENT. WHEN YOU MAKE A
25 CHANGE LIKE THIS, IT'S ALWAYS EASIER FOR EMPLOYEES TO COME
26 OVER HAPPY AND KIND OF KNOWING WHAT THEIR FUTURE IS, AND THE
27 FEELING WAS THAT IF THEY CONTINUED WITH THE TEAMSTERS LOCAL
28 350 AND THAT BARGAINING AGENT AND THAT CONTRACT FRAMEWORK,

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1 THAT THERE WOULD BE A LITTLE MORE CERTAINTY TO THEIR FUTURES
2 AND THEY WOULD THEREFORE BE HAPPIER AT THE NEW COMPANY.

3 Q. DID YOU HAVE ANY REASON TO BELIEVE THAT THE
4 LONGSHOREMEN WHO WORKED IN OAKLAND FOR CWS WERE UNHAPPY?

5 A. I HAD NO REASON TO BELIEVE THAT.

6 Q. AND CWS HAD BEEN PROPOSING IN NORCAL'S PROPOSAL TO
7 EXTEND THE COLLECTIVE BARGAINING AGREEMENT WITH THE
8 LONGSHOREMEN, CORRECT?

9 A. CORRECT.

10 Q. SO THERE WOULD HAVE BEEN A UNION IN PLACE IF THE
11 PROPOSAL HAD GONE FORWARD AS ORIGINALLY PROPOSED WITH
12 LONGSHOREMEN, CORRECT?

13 A. CORRECT.

14 Q. AND WAS THERE ANY CONCERN THAT MR. MORALES WOULD
15 SOMEHOW BE ABLE TO STRIKE CWS IF THE PROPOSAL WENT FORWARD
16 WITH LONGSHOREMEN?

17 A. I DON'T RECALL THAT CONCERN COMING UP, NO.

18 Q. YOUR UNDERSTANDING IS THAT WOULD BE AN ILLEGAL
19 STRIKE, WOULD IT NOT?

20 A. I DON'T KNOW.

21 Q. HOW WOULD IT NOT HAVE NOT BEEN PEACEFUL IF CWS IT
22 HAD GONE FORWARD USING LONGSHOREMEN?

23 A. I BELIEVE IT WAS A CONCERN FOR THE EMPLOYEES AND
24 HOW THEY WOULD HANDLE SUCH A CHANGE, THE UNCERTAINTY OVER
25 LOWER WAGES AND BENEFITS, JUST DIFFERENCES THAT HAD
26 EVERYBODY CONCERNED.

27 Q. THIS PROPOSAL FOR SAN JOSE WAS THE FIRST TIME YOU
28 HAD BEEN INVOLVED IN THE PROPOSAL PROCESS WITH A

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1 MUNICIPALITY?

2 A. NO.

3 Q. WHAT DID YOU MAKE OF THE FACT THAT THIS CONCERN WAS
4 NOT ADDRESSED IN THE RFP?

5 A. I'M NOT SO SURE THIS IS THE TYPE OF CONCERN THAT
6 COULD HAVE BEEN ADDRESSED IN AN RFP. THAT CAN'T COVER
7 EVERYTHING, SO IT DIDN'T REALLY AFFECT ME ONE WAY OR THE
8 OTHER.

9 Q. DID YOU KNOW WHETHER THE CITY HAD A LEGAL RIGHT TO
10 REQUIRE A CONTRACTOR TO GO WITH ONE UNION VERSUS ANOTHER?

11 A. I DON'T KNOW THE ANSWER TO THAT.

12 Q. WHAT EXACTLY TO THE BEST YOU CAN RECOLLECT, EITHER
13 DIRECT WORDS OR THE GIST OF WHAT WAS SAID, DO YOU RECOLLECT
14 THE MAYOR AND HIS BUDGET DIRECTOR SAYING AT THIS MEETING?

15 A. SPECIFICALLY, I DON'T RECALL THEIR WORDS. I JUST

16 KNOW WHEN I LEFT THE MEETING I FELT LIKE, IF WE COULD
17 PROVIDE PROPER DOCUMENTATION FOR INCREASED COSTS, THAT THEY
18 WOULD BE SUPPORTIVE OF US GOING TO THE COUNCIL AND
19 REQUESTING THAT INCREASED COST.

20 Q. WHEN YOU LEFT THE MEETING, DID YOU FEEL THAT
21 NORCAL'S -- AT THE MEETING, DID NORCAL AGREE TO ASK CWS TO
22 SWITCH TO THE TEAMSTERS?

23 A. I DON'T RECALL THAT, NO.

24 Q. AFTER THE MEETING, DID NORCAL ASK CWS TO SWITCH TO
25 THE TEAMSTERS?

26 A. I BELIEVE WE DID, YES.

27 Q. WHY DID NORCAL DO THAT?

28 A. BECAUSE WE FELT THAT IT WAS IN THE BEST INTERESTS

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1 OF BOTH NORCAL AND CWS TO HAVE THE TEAMSTERS ON BOARD AT THE
2 MRF SO WE COULD GO FORWARD WITH GETTING THE CONTRACT
3 THROUGH.

4 Q. I TAKE IT YOU FELT GETTING CWS TO SWITCH TO
5 TEAMSTERS WOULD IMPROVE OR ENHANCE NORCAL'S CHANCES OF
6 GETTING THE CONTRACT FROM THE CITY?

7 A. YES, I DID.

8 Q. WHY DID YOU THINK THAT?

9 A. BECAUSE I BELIEVED THAT THAT WOULD TAKE THE LABOR
10 PEACE ISSUE OFF THE TABLE RELATIVE TO OUR CONTRACT.

11 Q. AFTER THE OCTOBER 6, 2000 MEETING WITH THE MAYOR,
12 DID YOU FEEL THAT NORCAL HAD TO GET CWS TO SIGN WITH THE
13 TEAMSTERS IN ORDER TO GET ITS PROPOSAL APPROVED BY THE CITY

14 COUNCIL?

15 A. I WOULDN'T SAY I FELT THAT WE HAD TO DO IT, BUT I
16 FELT IT WAS AWFULLY IMPORTANT.

17 Q. WHY EXACTLY DID YOU FEEL IT WAS AWFULLY IMPORTANT?

18 A. ONCE AGAIN, TO GET THE LABOR PEACE ISSUE OFF THE
19 TABLE, I FELT IT WAS A VERY IMPORTANT ISSUE TO ALL THE CITY
20 COUNCILMEMBERS AND THAT THEY NEEDED TO SOLVE THAT.

21 Q. DID YOU TALK TO ANY OTHER CITY COUNCILMEMBERS THAT
22 FRIDAY, OCTOBER 6?

23 A. I THINK ON THAT DAY I BELIEVE I DID, YEAH.

24 Q. WHO DID YOU SPEAK WITH?

25 A. I BELIEVE I HAD A MEETING WITH JOHN DIQUISTO, WHO
26 WAS AT THAT TIME ON THE COUNCIL, AND I BELIEVE I HAD A
27 MEETING WITH MANNY DIAZ, WHO WAS ALSO ON THE COUNCIL.

28 Q. ANYONE ELSE?

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1 A. NOT THAT I CAN RECALL.

2 Q. WHY DID YOU MEET WITH THOSE TWO COUNCILMEMBERS?

3 A. WE WERE MEETING, MEANING NORCAL WAS GOING AROUND
4 MEETING WITH ALL THE COUNCILMEMBERS WHENEVER WE COULD TO
5 TALK ABOUT THE RECOMMENDATION FROM STAFF AND TO SORT OF
6 REINTRODUCE OURSELVES TO THEM TO SEE IF THEY HAD ANY
7 QUESTIONS.

8 AND JOHN, I HAD NOT GOTTEN A CHANCE TO MEET WITH
9 JOHN DIQUISTO YET. HE WANTED TO MEET MIKE SANGIACOMO PRETTY
10 BADLY, SO I BROUGHT MIKE BY THAT MORNING.

11 MANNY, AS I RECALL, THE ONLY OPEN TIME HE HAD ON

12 HIS CALENDAR HAPPENED TO BE LATE THAT AFTERNOON WHEN WE MET
13 WITH HIM LATE FRIDAY.

14 Q. LET'S START WITH JOHN DIQUISTO. IN YOUR MEETING
15 WITH JOHN DIQUISTO, WAS MIKE SANGIACOMO PRESENT?

16 A. YES.

17 Q. DID THE SUBJECT OF CWS USING TEAMSTERS COME UP IN
18 YOUR MEETING WITH JOHN DIQUISTO?

19 A. I DON'T RECALL SPECIFICALLY THAT COMING UP.

20 Q. IN YOUR MEETING WITH MANNY DIAZ, WAS MIKE
21 SANGIACOMO WITH YOU?

22 A. I DON'T THINK SO.

23 Q. IN YOUR MEETING WITH COUNCILMEMBER DIAZ, DID THE
24 SUBJECT OF CWS USING TEAMSTERS COME UP?

25 A. I DON'T BELIEVE IT DID SPECIFICALLY.

26 Q. WERE YOU AWARE OF ANY OTHER MEETINGS WITH ANY OTHER
27 COUNCILMEMBERS PRIOR TO THE FIRST VOTE, OTHER THAN THE
28 MAYOR, WHERE THE SUBJECT OF CWS SWITCHING TO TEAMSTERS CAME

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1 UP?

2 A. I BELIEVE IT CAME UP IN A MEETING THAT I HAD WITH
3 CINDY CHAVEZ.

4 Q. WHEN WAS THAT?

5 A. I DON'T RECALL.

6 Q. WAS IT BEFORE THE MEETING WITH THE MAYOR?

7 A. I'M NOT CERTAIN. I DO SEEM TO RECALL IT COMING UP,
8 BUT I DON'T REMEMBER WHEN.

9 Q. WHERE DID IT TAKE PLACE?

- 10 A. HER OFFICE AT OLD CITY HALL.
- 11 Q. BEFORE THE FIRST OCTOBER 10 COUNCIL VOTE?
- 12 A. I DON'T RECALL.
- 13 Q. WHO ELSE WAS PRESENT?
- 14 A. I BELIEVED MCGOVERN WAS THERE.
- 15 Q. ANYONE ELSE?
- 16 A. THAT'S IT.
- 17 Q. AFTER YOUR OCTOBER 6, 2000 MEETING WITH MAYOR
- 18 GONZALES AT CITY HALL, WAS IT YOUR BELIEF THAT THE MAYOR HAD
- 19 MADE A VERBAL COMMITMENT TO REIMBURSE NORCAL FOR THE
- 20 ADDITIONAL COSTS INVOLVED IN CWS SWITCHING TO THE TEAMSTERS?
- 21 A. NO.
- 22 Q. OTHER THAN COUNCILMEMBER CHAVEZ, DID ANY OTHER
- 23 COUNCILMEMBERS, EXCLUDING THE MAYOR, SPEAK WITH YOU ABOUT
- 24 CWS USING TEAMSTERS INSTEAD OF ILWU WORKERS?
- 25 A. NOT THAT I CAN RECALL, NO.
- 26 Q. PRIOR TO THE FIRST CITY COUNCIL VOTE ON OCTOBER 10,
- 27 2000, DID ANY OTHER SAN JOSE CITY OFFICIAL SUGGEST THAT
- 28 NORCAL'S CHANCES OF GETTING A CONTRACT WITH THE CITY WOULD

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- 1 BE IMPROVED IF CWS SIGNED WITH THE TEAMSTERS?
- 2 A. NO.
- 3 Q. PRIOR TO THE FIRST COUNCIL VOTE ON OCTOBER 10, DID
- 4 ANY OTHER CITY OFFICIALS SUGGEST THAT THE CITY WOULD PAY THE
- 5 ADDITIONAL COSTS OF CWS SIGNING WITH THE TEAMSTERS?
- 6 A. NO.
- 7 MR. FINKELSTEIN: MAYBE THIS IS A GOOD TIME TO

8 TAKE A FIVE-MINUTE RECESS.

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

18 DO YOU UNDERSTAND?

19 THE WITNESS: YES.

20 THE FOREMAN: LET'S RECESS UNTIL TWENTY OF.

21 (A BRIEF RECESS WAS TAKEN.)

22 THE FOREMAN: LET ME CALL THE GRAND JURY BACK TO
23 ORDER, PLEASE. LET THE RECORD SHOW THAT ALL JURORS ARE
24 PRESENT.

25 BY MR. FINKELSTEIN:

26 Q. MR. JONES, I REMIND YOU THAT YOU'RE STILL UNDER
27 OATH BECAUSE YOU HAVE BEEN PREVIOUSLY SWORN IN THIS
28 INVESTIGATION. DO YOU UNDERSTAND THAT?

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1 A. YES, I DO.

2 Q. I WANT TO GO THROUGH IN SOME MORE DETAIL THE EVENTS
3 OF OCTOBER 6, 2000, AND I WANT TO START BY GOING OVER AGAIN
4 YOUR STATE OF MIND.

5 DID YOU NOT TELL US THAT ON OCTOBER 5, 2000, WHEN

6 YOU SENT YOUR LETTER TO THE MAYOR, IT WAS STILL YOUR BELIEF
7 THAT CWS WOULD BE USING LONGSHOREMEN IN THE EVENT THAT
8 NORCAL WAS AWARDED THE CONTRACT?

9 A. YES.

10 Q. IS THAT WHAT YOU TESTIFIED TO?

11 A. YES.

12 Q. AND WAS THAT TESTIMONY TRUE?

13 A. I BELIEVE IT WAS, YES.

14 Q. SO CAN WE AGREE, THEN, AS OF THURSDAY, OCTOBER 5,
15 YOUR STATE OF MIND WAS THAT CWS WAS GOING TO BE USING
16 LONGSHOREMEN IF NORCAL WAS AWARDED THE CONTRACT, CORRECT?

17 A. I THINK IT WAS OUR HOPE THAT THEY WOULD BE ABLE TO
18 USE THE LONGSHOREMEN AT THAT POINT.

19 Q. NOW YOU'RE SAYING HOPE. WAS IT YOUR BELIEF THAT'S
20 WHAT WOULD HAPPEN, BECAUSE THAT'S WHAT YOU SAID EARLIER THIS
21 AFTERNOON. DO YOU WANT TO CHANGE YOUR TESTIMONY NOW?

22 A. I AM NOT SURE I KNOW THE DIFFERENCE BETWEEN THE
23 WORDS, BUT THEY BID IT WITH LONGSHOREMEN. IT WAS OUR DESIRE
24 TO HAVE THEM GET WHAT THEY BID AND TO USE THE LABOR FORCE
25 THE WAY THEY SAW FIT.

26 Q. MY QUESTION TO YOU EARLIER, SHORTLY BEFORE THE
27 RECESS WHEN I SHOWED YOU YOUR OCTOBER 5 LETTER WAS, WAS IT
28 YOUR BELIEF THAT CWS WOULD BE USING LONGSHOREMEN, AND I

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1 BELIEVE YOUR ANSWER WAS YES. I CAN HAVE THE REPORTER READ
2 IT BACK.

3 A. I BELIEVE THAT WAS MY ANSWER.

- 4 Q. IT WAS YOUR BELIEF ON OCTOBER 5 THAT CWS WOULD HAVE
5 BEEN USING LONGSHOREMEN, RIGHT?
- 6 A. YES.
- 7 Q. OKAY. THEN A MEETING OCCURS ON FRIDAY, OCTOBER 6,
8 2000, RIGHT?
- 9 A. CORRECT.
- 10 Q. WHAT WAS YOUR UNDERSTANDING OF THE PURPOSE OF THE
11 MEETING?
- 12 A. TO DISCUSS LABOR PEACE, ESSENTIALLY.
- 13 Q. AND WHO DID YOU UNDERSTAND HAD CONVENED THE
14 MEETING?
- 15 A. I DON'T RECALL WHO CONVENED THE MEETING.
- 16 Q. WHO INVITED YOU TO THE MEETING?
- 17 A. I DON'T RECALL THAT, TO BE HONEST WITH YOU.
- 18 Q. DID NORCAL SET UP THE MEETING?
- 19 A. I DON'T BELIEVE SO.
- 20 Q. SOMEONE OTHER THAN NORCAL SET UP THIS MEETING?
- 21 A. AS I RECALL, YES.
- 22 Q. AND SO THAT ONLY LEAVES -- THERE'S ONLY THREE
23 PARTIES HERE: NORCAL, LABOR, AND THE MAYOR, RIGHT?
- 24 A. THERE'S ALSO CWS.
- 25 Q. AND CWS, WHICH I KIND OF LUMPED WITH NORCAL. DID
26 CWS SET UP THE MEETING?
- 27 A. I DON'T RECALL.
- 28 Q. DID MR. MORALES SET UP THE MEETING?

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- 1 A. I DON'T RECALL.

- 2 Q. DID THE MAYOR' S OFFICE SET UP THE MEETING?
- 3 A. I DON' T RECALL.
- 4 Q. OKAY. CAN YOU TELL US, DID THE MAYOR SPEAK AT THIS
- 5 MEETING?
- 6 A. I BELIEVE HE DID, YES.
- 7 Q. WHAT DID HE SAY?
- 8 A. I COULDN' T SAY SPECI FICALLY.
- 9 Q. GENERALLY, THEN, WHAT DID HE SAY?
- 10 A. GENERALLY, AS I RECALL HE HAD SOME COMMENTS ABOUT
- 11 LABOR PEACE AND WANTING TO ASSURE LABOR PEACE, MAKE SURE ALL
- 12 THE PARTIES WERE ON THE SAME PAGE, AS I RECALL THE GENERAL
- 13 TOPI C.
- 14 Q. WELL, WHAT COMMENTS ABOUT LABOR PEACE?
- 15 A. I BELIEVE HE WAS -- AGAIN, I DON' T KNOW SPECI FIC
- 16 COMMENTS, BUT I BELIEVE HIS CONCERN WAS THAT WE HAVE LABOR
- 17 PEACE, THAT EMPLOYEES WERE TAKEN CARE OF, THAT THERE WOULD
- 18 BE A SMOOTH TRANSITI ON, AND THAT WAS VERY I MPORTANT.
- 19 Q. DID THE WORD "TEAMSTER" COME OUT OF THE MAYOR' S
- 20 MOUTH DURI NG THAT MEETING?
- 21 A. I DON' T RECALL.
- 22 Q. DID NORCAL AND YOU CONSIDER THIS TO BE AN I MPORTANT
- 23 MEETING, COMI NG ON THE EVE OF THE FIRST VOTE ON THE
- 24 CONTRA CT?
- 25 A. YES.
- 26 Q. AND SOMETI MES, GOI NG I NTO AN I MPORTANT MEETING,
- 27 PARTI ES HAVE EXPECTATI ONS OR HOPES AS TO WHAT THEY HOPE TO
- 28 ACHI EVE AT THE MEETING, RI GHT?

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1 A. I WOULD SAY SO, YES.

2 Q. WHAT DID YOU HOPE TO GET OUT OF THIS MEETING?

3 A. I THINK I HOPED THAT WE WOULD LEAVE THE MEETING
4 WITH EVERYONE BELIEVING THAT THEY WERE GOING TO HAVE LABOR
5 PEACE AND FEELING PRETTY GOOD ABOUT US ON THE FOLLOWING
6 TUESDAY.

7 Q. GOING INTO THE MEETING, DID YOU HAVE AN EXPECTATION
8 THAT YOU WOULD BE LEAVING THE MEETING ASKING CWS TO SWITCH
9 TO TEAMSTERS?

10 A. NOT NECESSARILY, NO.

11 Q. SO DID YOU OR ANYONE ELSE FROM NORCAL MAKE ANY
12 ARGUMENTS WHY YOU COULD HAVE LABOR PEACE WITH CWS USING
13 LONGSHOREMEN?

14 A. NOT THAT I SPECIFICALLY RECALL, NO.

15 Q. DO YOU RECALL ANYTHING ELSE ABOUT WHAT THE MAYOR
16 SAID AT THIS MEETING?

17 A. UH -- WHAT I RECALL AND, AGAIN, I DON'T RECALL THE
18 SPECIFIC WORDS, BUT THE GENERAL MESSAGE WAS THAT IF WE COULD
19 DEMONSTRATE THE INCREASED EXPENSES TO HIS BUDGET DIRECTOR
20 JOE GUERRA AND SUPPORT THEM, THAT HE WOULD BE SUPPORTIVE OF
21 US COMING BACK TO THE CITY REQUESTING ANY SORT OF
22 INCREMENTAL DIFFERENCE IF IN FACT THERE WAS ONE BETWEEN THE
23 TEAMSTERS AND THE ILWU.

24 Q. I UNDERSTAND THAT'S THE PART YOU RECALL. WHAT I'M
25 TRYING TO UNDERSTAND WAS, GOING INTO THE MEETING DID YOU
26 HAVE, YOU OR NORCAL, HAVE AS A GOAL GETTING EXTRA MONEY TO
27 PAY FOR CWS USING THE TEAMSTERS?

28 A. NO, I THINK OUR GOAL WAS TO GET ILWU OR DAVID IN,

1 CALIFORNIA WASTE SOLUTIONS IN, AS WE SUBMITTED.

2 Q. WITH ILWU?

3 A. IN THAT CASE, YES.

4 Q. THERE IS KIND OF A GAP HERE, DO YOU UNDERSTAND?

5 YOU'RE GOING TO A MEETING ON OCTOBER 6 IN THE MAYOR'S
6 CONFERENCE ROOM HOPING TO LEAVE WITH THE MAYOR ACCEPTING THE
7 IDEA THAT CWS COULD MAINTAIN LABOR PEACE WITH THE ILWU,
8 RIGHT?

9 A. THAT WOULD HAVE BEEN OUR HOPE.

10 Q. SOMEHOW IN THE MIDDLE OF THE MEETING THE MAYOR IS
11 MAKING SOME STATEMENT ABOUT GETTING NORCAL EXTRA MONEY TO
12 PAY FOR CWS USING TEAMSTERS, RIGHT?

13 A. I DON'T KNOW THAT THE MAYOR MADE THAT STATEMENT.

14 Q. HE MADE SOME REFERENCE TO SUPPORTING EXTRA MONEY
15 FOR NORCAL, RIGHT?

16 A. THERE WAS SOME STATEMENT TO THAT EFFECT, YES.

17 Q. THE EXTRA MONEY HAD TO DO WITH CWS USING TEAMSTERS
18 INSTEAD OF ILWU WORKERS, RIGHT?

19 A. CORRECT.

20 Q. OKAY. SO WHAT HAPPENED IN BETWEEN?

21 A. I COULDN'T SAY SPECIFICALLY. I BELIEVE, AS I SAID
22 EARLIER, TEAMSTERS WERE AT THE TABLE, CWS WAS AT THE TABLE,
23 AND I DON'T REMEMBER EXACTLY HOW ALL THE DETAILS FELL OUT.

24 Q. JUST SO WE'RE CLEAR, THURSDAY, OCTOBER 5, IT'S
25 STILL YOUR BELIEF THAT THIS DEAL IS GOING TO GO THROUGH WITH
26 CWS USING ILWU WORKERS, CORRECT?

27 A. YES.

28 Q. THERE IS A MEETING ON FRIDAY, OCTOBER 6; GOING INTO

1 THAT MEETING YOUR HOPE IS THAT CWS IS GOING TO BE ABLE TO
2 USE ILWU WORKERS, RIGHT?

3 A. YES.

4 Q. SOMETHING OCCURS AT THE MEETING WHICH LEADS TO A
5 DISCUSSION OF THE CITY PAYING FOR THE EXTRA COST OF CWS
6 USING TEAMSTERS, RIGHT?

7 A. AT SOME POINT THAT MUST HAVE COME UP, YES.

8 Q. CAN YOU TELL US, IS THERE ANYTHING YOU CAN SAY TO
9 FILL IN THAT GAP, HOW YOU WALKED INTO A MEETING HOPING TO
10 CONTINUE WITH CWS USING ILWU WORKERS, AS HAD BEEN PROPOSED
11 TO THE CITY, AND ALLOW YOU TO WALK OUT WITH SOME STATEMENT
12 BY THE MAYOR ABOUT POSSIBLY GETTING EXTRA MONEY FOR YOU FOR
13 CWS TO USE TEAMSTERS? HOW DID YOU GET FROM A TO B?

14 A. I DON'T RECALL EXACTLY HOW WE GOT FROM A TO B.
15 THERE WERE A NUMBER OF PEOPLE IN THE ROOM.

16 Q. WHAT DID JOE GUERRA SAY AT THIS MEETING?

17 A. I DON'T REMEMBER JOE GUERRA HAVING A VERY LARGE
18 PART OTHER THAN WE WERE DIRECTED TO WORK THROUGH HIM TO
19 SUPPORT ANY INCREASED COSTS ON A GO FORWARD BASIS.

20 CALIFORNIA WASTE SOLUTIONS' POSITION HAD BEEN THAT
21 THEIR ONLY REASON FOR NOT GOING WITH TEAMSTERS VERSUS ILWU
22 WAS COST, BENEFIT COSTS, WAGE COSTS, ET CETERA. THAT MAY
23 HAVE COME UP DURING THE MEETING, THAT WAS A PRIMARY CONCERN.
24 I DON'T RECALL.

25 Q. WE'RE TRYING TO UNDERSTAND HOW YOU AND NORCAL
26 WALKED AND CWS WALKED INTO A MEETING, YOU KNOW, EXPECTING TO
27 USE ILWU WORKERS, AND YOU WALK OUT WITH SOME STATEMENTS BY

28 THE MAYOR AND BUDGET DIRECTOR ABOUT GETTING PAID FOR THE

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1 EXTRA COSTS OF USING TEAMSTERS. DO YOU SEE THAT GAP THERE?

2 A. RIGHT. I DON'T THINK THAT IT'S UNREASONABLE TO
3 BELIEVE THAT -- I DON'T KNOW WHAT CWS WAS EXPECTING, BY THE
4 WAY, BUT FOR US TO WALK IN HOPING THAT WE WOULD BE ABLE TO
5 DO WHAT WE SAID WE WERE GOING TO DO IN THE PROPOSAL AND
6 EVERYTHING WOULD BE FINE, I THINK THAT'S A REASONABLE GOAL.

7 IN TERMS OF HOW IT GOT THERE, AGAIN, CWS WAS VERY
8 CLEARLY ALL ALONG -- NOT ALL ALONG, BUT ONCE THE ISSUE CAME
9 UP, THEIR CLEAR PRIMARY CONCERN WAS DOLLARS.

10 Q. LOOK. BUT LOOK. YOU WERE IN CHARGE OF PUTTING
11 NORCAL'S PROPOSAL TOGETHER, RIGHT?

12 A. YES.

13 Q. TO PUT A PROPOSAL TOGETHER IN WHICH YOU HAD CWS
14 USING ILWU WORKERS?

15 A. YES.

16 Q. AS LATE AS OCTOBER 5, THE DAY BEFORE THE MEETING,
17 YOU SEND A LETTER WHICH REFERENCES THE FACT THAT CWS IS
18 GOING TO USE ILWU WORKERS, RIGHT?

19 A. YES.

20 Q. OKAY. YOU WALK OUT OF A MEETING WITH SOME
21 REPRESENTATIONS ABOUT THE MAYOR POSSIBLY SUPPORTING EXTRA
22 MONEY FOR CWS TO USE TEAMSTERS, RIGHT?

23 A. YES.

24 Q. WELL, IN BETWEEN THOSE TWO EVENTS, SOMEONE HAD TO
25 SAY, I NEED, THAT THEY WANTED CWS TO SWITCH FROM ILWU

26 WORKERS TO TEAMSTERS. WOULDN'T THAT MAKE SENSE?
27 A. I DON'T KNOW THAT ANYBODY SPECIFICALLY SAID THAT.
28 I THINK THE FEELING WAS THAT IN ORDER TO ACHIEVE LABOR PEACE

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1 YOU WOULD NEED TO USE TEAMSTERS.
2 Q. WHO EXPRESSED THAT FEELINGS?
3 A. I DON'T KNOW THAT ANYBODY SPECIFICALLY EXPRESSED
4 IT. I KNOW I LEFT THE ROOM FEELING THAT WAY AFTER GOING
5 THROUGH A NUMBER OF MEETINGS AND DISCUSSIONS, HEARING PEOPLE
6 TALK ABOUT IT, YOU KNOW, ON THE STREET ESSENTIALLY THAT WE
7 WERE NOT GOING TO HAVE LABOR PEACE IF WE WENT WITH ILWU.
8 Q. MR. JONES, HOW MANY PROPOSALS HAD YOU WORKED ON FOR
9 NORCAL BEFORE THIS PROPOSAL?
10 A. I COULDN'T SAY SPECIFICALLY.
11 Q. HOW ABOUT BALLPARK?
12 A. HALF A DOZEN.
13 Q. OKAY. THIS ISSUE OF LABOR PEACE, WAS IT UNIQUE TO
14 SAN JOSE OR DO OTHER CITIES HAVE SIMILAR PROVISIONS?
15 A. IT WAS UNIQUE IN TERMS OF ANY CITIES I HAD DEALT
16 WITH.
17 Q. OKAY. THE ISSUE OF LABOR PEACE WAS SOMETHING THAT
18 WAS IN THE RFP, RIGHT?
19 A. I BELIEVE SO.
20 Q. YOU READ IT, RIGHT?
21 A. YES.
22 Q. YOU WERE TRYING TO RESPOND TO EVERYTHING IN THE
23 RFP, RIGHT?

24 A. YES.

25 Q. WHEN YOU PUT THE PROPOSAL TOGETHER AND YOU INCLUDED
26 SUBCONTRACTING OUT THE RECYCLING WORK TO CWS AND CWS USING
27 ILWU, DID YOU THINK THAT WAS NOT GOING TO SATISFY LABOR
28 PEACE?

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1 A. AT THAT TIME I BELIEVED THAT IT WOULD SATISFY LABOR
2 PEACE.

3 Q. WHAT CHANGED YOUR MIND?

4 A. HEARING FROM PEOPLE IN THE COMMUNITY ABOUT THE FACT
5 THAT IT WAS NOT GOING TO BE LABOR PEACE.

6 Q. WHICH PEOPLE?

7 A. TEAMSTERS.

8 Q. BOB MORALES?

9 A. YES.

10 Q. ANYONE ELSE?

11 A. UH -- POSSIBLY FOLKS THAT WORK FOR HIM, JIM FURGAS,
12 LARRY DAUGHERTY, BUT I DON'T RECALL SPECIFICALLY.

13 Q. WHAT DID MR. MORALES TELL YOU THAT SUGGESTED THAT
14 CWS USING ILWU WORKERS WAS INCONSISTENT WITH LABOR PEACE?

15 A. HIS BELIEF WAS THAT LABOR PEACE MEANT THAT HIS
16 UNION WAS THE UNION FOR THOSE DISPLACED EMPLOYEES.

17 Q. IS THAT CONTAINED IN THE RFP?

18 A. I DON'T BELIEVE IT WAS, NO.

19 Q. COULD THE CITY OF SAN JOSE LEGALLY IMPOSE SUCH A
20 REQUIREMENT IN THE RFP?

21 A. I DON'T KNOW THE ANSWER TO THAT QUESTION.

- 22 Q. WHEN YOU WALKED INTO THE ROOM, WHO FIRST BROUGHT UP
23 THE SUBJECT OF WHICH UNION WOULD REPRESENT CWS' S WORKERS?
24 A. ON OCTOBER 6?
25 Q. YES.
26 A. I ' M NOT CERTAIN.
27 Q. DID NORCAL BRING IT UP FIRST?
28 A. I DON' T KNOW.

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- 1 Q. DID YOU BRING IT UP FIRST?
2 A. I DON' T KNOW.
3 Q. DID THE MAYOR BRING IT UP FIRST?
4 A. I DON' T KNOW.
5 Q. DID BOB MORALES BRING IT UP FIRST?
6 A. I DON' T KNOW.
7 Q. DID JOE GUERRA BRING IT UP FIRST?
8 A. I DON' T KNOW.
9 Q. WHEN YOU WALKED OUT OF THE MEETING, DID YOU FEEL
10 THAT CWS USING TEAMSTERS WAS SOME KIND OF A REQUIREMENT FOR
11 THE CONTRACT?
12 A. I DON' T BELIEVE I FELT IT WAS A REQUIREMENT. I DID
13 FEEL THAT IT WAS A DEFINITE SELLING POINT AND THAT IT WOULD
14 BE VERY WELL RECEIVED, BUT I DIDN' T FEEL IT WAS A
15 REQUIREMENT.
16 Q. SELLING POINT WITH WHOM?
17 A. WITH THE COUNCIL.
18 Q. YOU TOLD US YOU TALKED TO TWO OTHER COUNCIL MEMBERS,
19 MANNY DIAZ AND JOHN DIQUISTO, AND NEITHER ONE BROUGHT UP THE

20 SUBJECT OF TEAMSTERS OR CWS, RIGHT?

21 A. THEY DID NOT BRING UP TEAMSTERS OR CWS, BUT THE
22 CONCEPT OF LABOR PEACE HAD BEEN BROUGHT UP, NOT JUST BY
23 THEM, BUT BY OTHERS.

24 Q. WHO?

25 A. JUST ABOUT EVERY COUNCILPERSON I TALKED TO HAD SOME
26 CONCERNS ABOUT LABOR PEACE AT SOME LEVEL.

27 Q. DID ANY OF THE OTHER COUNCILPERSONS CHARACTERIZE
28 LABOR PEACE MEANING CWS WORKERS HAD TO BE TEAMSTERS?

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1 A. NO, NOT SPECIFICALLY.

2 Q. SO THE ONLY TIME THE CONCEPT OF LABOR PEACE WAS
3 LINKED TO CWS USING TEAMSTERS WAS AT THIS MEETING ON OCTOBER
4 6 WITH THE MAYOR, CORRECT?

5 A. NO, NOT NECESSARILY.

6 Q. WELL, IT DID HAPPEN IN THE OCTOBER 6 MEETING WITH
7 THE MAYOR?

8 A. I DON'T RECALL SPECIFICALLY, BUT IT HAD BEEN
9 BROUGHT UP BY BOB MORALES FROM THE TEAMSTERS TO ME DIRECTLY
10 A NUMBER OF TIMES.

11 Q. WHEN?

12 A. I DON'T RECALL.

13 Q. BEFORE THE OCTOBER 6 MEETING?

14 A. I BELIEVE BEFORE THE OCTOBER 6 MEETING, YES.

15 Q. WHEN HE BROUGHT IT UP BEFORE THE OCTOBER 6 MEETING,
16 DID THAT CAUSE YOU OR NORCAL TO RETHINK THEIR POSITION ABOUT
17 WHETHER CWS NEEDED TO USE TEAMSTERS?

- 18 A. ABSOLUTELY.
- 19 Q. YET ON THURSDAY, OCTOBER 5, YOU STILL INDICATED YOU
20 WERE GOING, THAT CWS WAS GOING TO USE ILWU WORKERS.
- 21 A. THAT WAS STILL OUR INTENT, YES.
- 22 Q. APPARENTLY MR. MORALES' CONCERNS BY THEMSELVES WERE
23 NOT SUFFICIENT TO GET NORCAL TO ASK CWS TO SWITCH TO
24 TEAMSTERS, FAIR?
- 25 A. FAIR.
- 26 Q. OKAY. SO IT WAS ONLY AFTER THE OCTOBER 6, 2000
27 MEETING WITH THE MAYOR AND HIS BUDGET DIRECTOR, JOE GUERRA,
28 THAT CWS -- STRIKE THAT -- THAT NORCAL ASKED CWS TO SWITCH

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- 1 TO TEAMSTERS, CORRECT?
- 2 A. UH -- I CAN'T SAY THAT WE NEVER HAD A CONVERSATION
3 ABOUT IT PRIOR TO THAT, BUT CERTAINLY AFTER THAT DATE IT
4 BECAME MORE OF AN ISSUE AND CONCERN. WE MAY HAVE HAD ONE OR
5 TWO CONVERSATIONS BEFORE THAT ABOUT WHAT WOULD IT LOOK LIKE.
- 6 Q. CONVERSATIONS WITH WHOM?
- 7 A. WITH CWS, PROBABLY WITH DAVID AND HIS STAFF.
- 8 Q. BUT NONE OF THOSE CONVERSATIONS INVOLVED ASKING CWS
9 TO SWITCH, RIGHT?
- 10 A. NOT SPECIFICALLY.
- 11 Q. THEY ONLY ASKED, THESE WERE CONVERSATIONS TO TRY TO
12 FIND OUT WHAT THE NUMBERS WOULD LOOK LIKE IF CWS SWITCHED,
13 RIGHT?
- 14 A. YEAH, AND I WOULD CHARACTERIZE IT AS BEING MORE
15 CONCEPTUAL, WHAT WOULD HAPPEN IF, WHAT DOES IT DO TO THE

16 LONGSHOREMEN AGREEMENT, RESEARCHING ALL SORTS OF
17 ALTERNATIVES.

18 Q. THE FIRST TIME THAT NORCAL ASKED CWS TO ACTUALLY
19 MAKE THE SWITCH WAS AFTER THE OCTOBER 6, 2000 MEETING AT THE
20 MAYOR'S OFFICE, CORRECT?

21 A. I BELIEVE THAT'S ACCURATE, YES.

22 Q. LET ME HAVE YOU TAKE A LOOK AT EXHIBIT 15. HAVE
23 YOU SEEN THIS DOCUMENT BEFORE?

24 A. I BELIEVE I HAVE, YES.

25 Q. WHEN DID YOU FIRST SEE THIS DOCUMENT?

26 A. I DON'T RECALL.

27 Q. IT WAS CLOSE IN TIME TO THE DATE OF THE DOCUMENT?

28 A. MOST LIKELY, YES.

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1 Q. SO WOULD THAT -- SO YOU SAW THIS DOCUMENT SOME TIME
2 CLOSE IN TIME TO THE DATE ON THE DOCUMENT, CORRECT?

3 A. YES, I BELIEVE SO.

4 Q. AND THE DATE OF THE DOCUMENT IS MONDAY, OCTOBER 9,
5 2000?

6 A. YES.

7 Q. DID YOU WORK ON THE WORDING OF THIS DOCUMENT?

8 A. I DON'T BELIEVE I DID, NO.

9 Q. DID YOU HAVE A DISCUSSION WITH MR. SANGIACOMO ABOUT
10 THIS DOCUMENT BEFORE HE APPARENTLY SIGNED IT?

11 A. UH -- I DON'T RECALL SPECIFICALLY, BUT WE MAY HAVE
12 HAD SOME CONVERSATION ABOUT IT.

13 Q. WERE YOU GENERALLY AWARE THAT HE WAS GOING TO ENTER
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14 INTO AN AGREEMENT SUCH AS THIS WITH CWS?

15 A. YES, I WAS.

16 Q. AND GENERALLY SPEAKING, THIS AGREEMENT PROMISES
17 THAT NORCAL WILL REIMBURSE CWS FOR THE EXTRA WAGE AND
18 BENEFIT COST FOR SWITCHING TO TEAMSTERS, CORRECT?

19 A. YES, IT DOES.

20 Q. AND DID YOU SEE THIS DOCUMENT BEFORE THE FIRST CITY
21 COUNCIL VOTE?

22 A. I BELIEVE I DID, YES.

23 Q. AND THAT FIRST CITY COUNCIL VOTE WAS ON TUESDAY,
24 OCTOBER 10?

25 A. YES.

26 Q. THE DOCUMENT WAS SIGNED ON MONDAY, OCTOBER 9,
27 RIGHT?

28 A. YES.

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1 Q. SO WHEN DID YOU SEE THE DOCUMENT?

2 A. I DON'T RECALL SPECIFICALLY.

3 Q. WELL, DID YOU WORK THAT WEEKEND?

4 A. I MIGHT HAVE.

5 Q. SO YOU WOULD HAVE SEEN THIS DOCUMENT, AT LEAST AN
6 UNSIGNED VERSION, EITHER ON THE WEEKEND OR MONDAY, FAIR
7 ENOUGH?

8 A. I WOULD SAY THAT'S A REASONABLE ASSUMPTION.

9 Q. OKAY. WELL, IF YOU SAW IT BEFORE THE FIRST
10 TUESDAY, OCTOBER 10 VOTE, IT HAD TO BE EITHER SATURDAY,
11 SUNDAY OR MONDAY.

- 12 A. AGAIN, I BELIEVE I DID SEE IT BEFORE THE VOTE.
- 13 Q. DIRECTING YOUR ATTENTION TO THE FIRST PARAGRAPH IN
- 14 THE DOCUMENT, THERE'S SOME LANGUAGE IN HERE THAT BEGINS,
- 15 "THE PARTIES HAVE LEARNED." DO YOU SEE THAT LANGUAGE?
- 16 A. YES.
- 17 Q. AND IT SAYS, "THE PARTIES HAVE LEARNED THAT THE
- 18 CITY OF SAN JOSE MAY REQUIRE CALIFORNIA WASTE SOLUTIONS,
- 19 INC., AND NORCAL TO PROVIDE WAGE AND BENEFIT PACKAGES THAT
- 20 ARE DIFFERENT," AND IT SAYS "THAT", BUT I ASSUME IT MEANS
- 21 "THAN", "CWS'S CURRENT WAGE AND BENEFIT PACKAGES."
- 22 DO YOU SEE THAT?
- 23 A. YES.
- 24 Q. THAT'S A REFERENCE TO SWITCHING FROM LONGSHOREMEN
- 25 TO TEAMSTERS, IS IT NOT?
- 26 A. I'M NOT SURE IF THAT'S WHAT IT'S A REFERENCE TO.
- 27 Q. WHAT ELSE COULD IT BE A REFERENCE TO?
- 28 A. POSSIBLY PAYING HIGHER WAGES UNDER THE ILWU

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- 1 CONTRACT; I DIDN'T WRITE IT, SO I CAN'T TELL YOU.
- 2 Q. I THOUGHT YOU SAID A FEW MINUTES AGO THAT THIS
- 3 AGREEMENT WAS, THE PURPOSE OF THE AGREEMENT WAS FOR NORCAL
- 4 TO REIMBURSE CWS THE HIGHER WAGE AND BENEFIT COST OF
- 5 SWITCHING TO TEAMSTERS. IS THAT NOT CORRECT ANYMORE?
- 6 A. I THINK ULTIMATELY THAT'S WHAT IT TURNED OUT TO BE.
- 7 Q. WHO DID THE PARTIES LEARN FROM THAT THE CITY MAY
- 8 REQUIRE THESE HIGHER WAGE AND BENEFIT COSTS?
- 9 A. I DON'T KNOW.

10 Q. WHAT IS THIS REQUIREMENT THAT'S BEING REFERRED TO
11 THE IN THE TITLE?

12 A. I DON'T KNOW.

13 Q. WHEN YOU SAW THAT DOCUMENT SATURDAY, SUNDAY OR
14 MONDAY, DID YOU ASK ANYONE AT NORCAL, WHAT IS THAT IN
15 REFERENCE TO?

16 A. I DON'T BELIEVE I DID, NO.

17 Q. WHY IS THAT?

18 A. UH -- QUITE FRANKLY, IT DIDN'T CONCERN ME.

19 Q. WHY IS THAT?

20 A. IT JUST WASN'T GOING ON MY RADAR SCREEN AT THAT
21 POINT. I WAS MORE CONCERNED WITH GETTING SOMETHING SIGNED
22 AND HAVING LABOR PEACE, WHATEVER THAT MEANT AT THE TIME. IF
23 IT GOT SIGNED, GREAT. IF NOT, IF THERE WAS SOME COMMITMENT.

24 Q. LOOKING AT THAT DOCUMENT, DO YOU RECOGNIZE
25 MR. SANGIACOMO'S SIGNATURE ON THAT DOCUMENT?

26 A. I DO.

27 Q. LOOKING AT THAT DOCUMENT WHICH BEGINS, "THE CITY,"
28 THAT THE CITY MAY REQUIRE CWS TO CHANGE ITS WAGES OR

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1 BENEFITS FROM ITS PROPOSAL, DO YOU SEE THAT LANGUAGE?

2 A. WHERE IS THAT?

3 Q. THE VERY FIRST SENTENCE. "THE PARTIES HAVE LEARNED
4 THAT THE CITY OF SAN JOSE MAY REQUIRE CALIFORNIA WASTE
5 SOLUTIONS AND NORCAL TO PROVIDE WAGE AND BENEFIT PACKAGES
6 THAT ARE DIFFERENT FROM CWS'S CURRENT WAGE AND BENEFIT
7 PACKAGES. "

8 DO YOU SEE THAT?
9 A. YES.
10 Q. LOOKING AT THAT SENTENCE, FIRST OF ALL, WE'RE NOT
11 TALKING ABOUT NORCAL PAYING MORE MONEY TO ITS WORKERS BASED
12 ON THAT RECITAL, ARE WE?
13 A. BASED ON THIS?
14 Q. YES.
15 A. NO, I DON'T BELIEVE SO.
16 Q. WE'RE TALKING ABOUT CWS PAYING HIGHER WAGES AND
17 BENEFITS?
18 A. CORRECT.
19 Q. AND CWS HAD AN EXISTING COLLECTIVE BARGAINING
20 AGREEMENT WITH THE ILWU, RIGHT?
21 A. YES.
22 Q. SO, BASED ON THE CBA THAT CWS HAD, IT DIDN'T HAVE,
23 THERE WAS NO REQUIREMENT THAT IT HAD TO PAY HIGHER WAGES AND
24 BENEFITS, RIGHT?
25 A. I BELIEVE THAT'S CORRECT.
26 Q. SO DOES THIS DOCUMENT SUGGEST TO YOU THAT IT WAS AT
27 THAT TIME THAT THE CITY WAS REQUIRING CWS TO PAY HIGHER
28 WAGES AND BENEFITS?

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1 A. THAT IS WHAT THE DOCUMENT SUGGESTS, YES.
2 Q. AND SO YOU HAD NO CURIOSITY WHEN YOU SAW THAT TO
3 ASK ANYONE ELSE WHAT THAT WAS REFERRING TO?
4 A. I DID NOT, NO.
5 Q. ON MONDAY, OCTOBER 9, SAME DAY AS THAT DOCUMENT,
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6 DID YOU MEET WITH ED MCGOVERN, BOB MORALES, AND AMY DEAN IN
7 A BASEMENT ROOM OF A RESTAURANT CALLED 840 NORTH FIRST
8 STREET?

9 A. I DON'T RECALL IF THAT WAS ON OCTOBER 9 WITH THEM,
10 BUT I DID MEET IN A BASEMENT ROOM WITH THEM AT 840.

11 Q. IT WAS BEFORE THE OCTOBER 10 COUNCIL MEETING?

12 A. YES.

13 Q. IS THE REASON YOU'RE NOT SURE IT'S MONDAY, OCTOBER
14 9, IS BECAUSE IT COULD HAVE BEEN ON THE WEEKEND?

15 A. NO, BUT FOR SOME REASON IN MY HEAD I THOUGHT IT WAS
16 ACTUALLY THE DATE OF THE VOTE, TUESDAY THE 10TH, FOR SOME
17 REASON.

18 Q. ON OR ABOUT OCTOBER 9 OR 10, DID YOU HAVE A MEETING
19 IN A BASEMENT ROOM AT 840 NORTH FIRST STREET WITH BOB
20 MORALES, ED MCGOVERN, AND AMY DEAN?

21 A. YES. AND I BELIEVE AN ATTORNEY FOR THE SOUTH BAY
22 LABOR COUNCIL, I THINK, WAS ALSO IN ATTENDANCE.

23 Q. WHO WAS THAT?

24 A. I DON'T RECALL THE GENTLEMAN'S NAME. I BELIEVE
25 THEY HAD THEIR ATTORNEY THERE.

26 Q. WAS THAT MR. ABSALOM?

27 A. COULD HAVE BEEN.

28 Q. WAS IT MR. SOKOL, S-O-K-O-L?

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1 A. I DON'T KNOW. I SEEM TO RECALL HE HAD A BRITISH
2 ACCENT, BUT I COULDN'T TELL YOU HIS NAME.

3 Q. HOW DID THAT MEETING COME ABOUT?

4 A. LET' S SEE, I' M TRYING TO RECALL WHO CALLED ME. I
5 DON' T KNOW IF IT WAS BOB MORALES WHO CALLED ME OR AMY DEAN.
6 I BELIEVE IT WAS BOB WHO CONTACTED ME AND ASKED ME TO COME
7 TO THE MEETING TO TALK ABOUT LABOR PEACE, ESSENTIALLY.
8 Q. LET ME DIGRESS FOR A MOMENT. BACK IN 2000, HOW DID
9 YOU KEEP TRACK OF YOUR MEETINGS AND APPOINTMENTS SCHEDULE?
10 A. MY CALENDAR.
11 Q. WAS THIS A PRINTED CALENDAR OR ELECTRONIC CALENDAR?
12 A. ELECTRONIC CALENDAR, PRIMARILY.
13 Q. WHAT WAS THE CALENDAR KEPT ON, SOME MOBILE DEVICE
14 OR SOME WORKSTATION?
15 A. IT WAS A PALM PILOT, KEPT ON A DEVICE SYNCED UP TO
16 A WORKSTATION IN MY OFFICE.
17 Q. SO YOU SYNCHRONIZED YOUR PALM PILOT WITH YOUR
18 OUTLOOK CALENDAR?
19 A. YES.
20 Q. THE WORKSTATION, WAS IT A NORCAL WORKSTATION?
21 A. YES.
22 Q. WAS IT NETWORKED OR STAND-ALONE?
23 A. STAND-ALONE.
24 Q. WAS IT BACKED UP IN ANY WAY?
25 A. I DON' T BELIEVE SO.
26 Q. WHAT HAPPENED AT THIS MEETING?
27 A. IF I RECALL CORRECTLY, AT THAT MEETING AMY DEAN LET
28 US KNOW THAT SHE WAS NOT SUPPORTIVE OF THE ILWU AND WOULD

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2 SAN JOSE. AND THAT IF THAT DID NOT OCCUR, THAT SHE WOULD
3 PROTEST THE AWARDING OF THE CONTRACT TO NORCAL, TO CWS.

4 Q. WHAT DOES THAT MEAN, PROTEST THE AWARDING OF THE
5 CONTRACT?

6 A. I TOOK IT TO MEAN THAT SHE WOULD STAND UP AND MAKE
7 A PUBLIC STATEMENT THAT SHE WAS NOT SUPPORTIVE OF THE
8 CONTRACT BEING AWARDED TO US AT THE OCTOBER 10 COUNCIL
9 MEETING BECAUSE OF LABOR PEACE CONCERNS.

10 Q. SO, GIVEN YOUR LAST ANSWER, CAN WE NOW ASSUME THAT
11 THIS MEETING MUST HAVE OCCURRED BEFORE THE OCTOBER 10
12 COUNCIL MEETING?

13 A. IT WAS DEFINITELY BEFORE THE MEETING. I DON'T
14 REMEMBER IF IT WAS IN THE MORNING OF OCTOBER 10 OR MORNING
15 OF OCTOBER 9, BUT IT WAS CLEARLY BEFORE THE OCTOBER 10 VOTE.

16 Q. DID MISS DEAN SAY ANYTHING ELSE?

17 A. SHE MIGHT HAVE, BUT THAT WAS THE PRIMARY MESSAGE.

18 Q. SORRY?

19 A. SHE MAY HAVE SAID OTHER THINGS.

20 Q. DID MR. MORALES SPEAK AT THE MEETING?

21 A. I BELIEVE SO.

22 Q. WHAT DID HE SAY?

23 A. I BELIEVE HE ECHOED HER SENTIMENTS. HE FELT HE
24 WOULD ALSO PROTEST THE AWARDING OF THE CONTRACT.

25 Q. DID THIS CONCERN YOU?

26 A. YES, IT DID.

27 Q. DID YOU TELL THEM THAT NORCAL HAD ALREADY AGREED TO
28 TAKE CARE OF THE EXTRA COSTS OF CWS SWITCHING TO THE

1 TEAMSTERS?

2 A. I DON'T BELIEVE I DID, NO.

3 Q. DID YOU KNOW THAT THAT HAD HAPPENED AT THE TIME OF
4 THE MEETING?

5 A. I DON'T RECALL IF I DID OR NOT.

6 Q. AT THE TIME OF THAT MEETING AT 840 NORTH FIRST
7 STREET, DID YOU KNOW WHETHER OR NOT ILWU WAS ALSO AFFILIATED
8 WITH THE SOUTH BAY LABOR COUNCIL?

9 A. IT WAS MY UNDERSTANDING THAT THEY WERE AFFILIATED.

10 Q. DID YOU ASK MISS DEAN WHY SHE WAS TAKING SIDES
11 AMONG TWO AFFILIATED UNIONS, BOTH OF WHICH WERE PART OF THE
12 SOUTH BAY LABOR COUNCIL?

13 A. I DID NOT.

14 Q. DID THAT QUESTION CROSS YOUR MIND?

15 A. IT DID.

16 Q. AND SO IS THERE A REASON YOU DIDN'T ASK HER THAT?

17 A. IT WASN'T A QUESTION AND ANSWER SESSION.

18 Q. WHAT DO YOU MEAN?

19 A. THEY WERE BEING VERY DIRECT. IT WAS A SHORT
20 MEETING, VERY SHORT MEETING. THEY HAD A MESSAGE TO GET
21 ACROSS. THEY GOT IT ACROSS AND I LEFT.

22 Q. WOULD YOU SAY THAT THEY USED VERY STRONG WORDS WITH
23 YOU ABOUT THIS SUBJECT?

24 A. I WOULDN'T SAY THEY WERE VERY STRONG WORDS, BUT
25 THEY WERE VERY DIRECT AND VERY CLEAR.

26 Q. I MEAN, ARE YOU SUGGESTING THEY SAID, LOOK, IF YOU
27 DON'T GO WITH THE TEAMSTERS, THIS IS WHAT'S GOING TO HAPPEN?
28 WAS THAT THE TONE OF THE MEETING?

1 A. UH -- I DON'T KNOW HOW YOU CAN DESCRIBE THE TONE.
2 THEY WERE VERY SERIOUS, PROFESSIONAL ABOUT IT. IT WASN'T
3 THREATENING IN ANY WAY, BUT THEY WERE VERY CLEAR, THEIR
4 POSITION WAS THAT IF THOSE EMPLOYEES WEREN'T COVERED BY THE
5 TEAMSTERS, THEY WOULD NOT BE SUPPORTIVE OF THE CONTRACT
6 BEING AWARDED TO NORCAL AND CWS.

7 Q. CAN YOU SAY WHETHER OR NOT THE 840 NORTH FIRST
8 STREET MEETING HAPPENED BEFORE OR AFTER YOUR MEETING ON
9 OCTOBER 6 WITH THE MAYOR?

10 A. I BELIEVE IT WAS AFTER.

11 Q. BUT BEFORE THE COUNCIL VOTE OF OCTOBER 10?

12 A. IT WAS DEFINITELY BEFORE THE COUNCIL VOTE, THAT I
13 KNOW.

14 Q. WHAT DID YOU TELL THEM WHEN THEY TOLD YOU IN THAT
15 VERY SHORT AND DIRECT FASHI ON THEY WOULD PROTEST AGAINST THE
16 AWARDING OF THE CONTRACT TO NORCAL BEFORE THE CITY COUNCIL
17 IF CWS DID NOT GO WITH THE TEAMSTERS?

18 A. UH -- I TOLD THEM, THESE MAY NOT BE THE EXACT
19 WORDS. I ESSENTIALLY SAID, I UNDERSTAND, THANK YOU, AND I
20 LEFT.

21 Q. WAS ANY REPRESENTATIVE OF CWS IN ATTENDANCE AT THIS
22 MEETING?

23 A. NO.

24 Q. DID YOU ASK THEM WHY THEY WERE COMMUNICATING THEIR
25 THOUGHTS TO NORCAL ABOUT WHICH UNION A COMPLETELY SEPARATE
26 COMPANY, CWS, SHOULD GO WITH?

27 A. I DID NOT ASK THEM THAT, NO.

28 Q. WHY IS THAT?

1 A. AGAIN, IT WASN'T A QUESTION AND ANSWER SESSION.

2 Q. IS THAT THE ONLY REASON YOU DIDN'T ASK THEM?

3 A. THAT WAS THE PRIMARY REASON. I HAD OTHER
4 CONVERSATIONS WITH BOB MORALES WHERE, QUITE FRANKLY, THE
5 LINE BETWEEN CWS AND NORCAL WAS VERY BLURRY TO HIM. HE
6 SEEMED TO THINK WE WERE THE SAME COMPANY. I FELT THIS MIGHT
7 HAVE HAD SOMETHING TO DO WITH IT.

8 Q. IS THAT THE REASON?

9 A. I DON'T KNOW, BUT IT COULD HAVE LED TO IT.

10 Q. LET ME PUT IT A LITTLE MORE DIRECTLY TO YOU.
11 NORCAL WAS THE COMPANY SEEKING THE CONTRACT FROM THE CITY,
12 CORRECT?

13 A. YES.

14 Q. CWS HAD NO, WAS NOT SEEKING A CONTRACT DIRECTLY
15 WITH THE CITY?

16 A. CORRECT.

17 Q. WHATEVER POLITICAL CLOUT BOB MORALES AND THE
18 TEAMSTERS AND AMY DEAN AND THE SOUTH BAY LABOR COUNCIL HAD
19 IS WITH THE CITY COUNCIL AND THE MAYOR, RIGHT?

20 A. YES.

21 Q. SO THEIR LEVERAGE WAS TO THREATEN TO HOLD UP THE
22 AWARDING OF THE CONTRACT TO NORCAL. THAT'S WHY THEY WERE
23 TALKING TO NORCAL, WASN'T THAT TRUE?

24 A. THAT COULD HAVE BEEN PART OF THE REASON WHY. I
25 DON'T KNOW THEIR THINKING, BUT THAT MAKES SENSE.

26 Q. CAN YOU THINK OF ANY OTHER REASON WHY TWO LABOR

27 REPRESENTATIVES WOULD DISCUSS WITH NORCAL WHICH UNION
28 ANOTHER COMPANY, CWS, IS GOING TO RECOGNIZE?

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1 A. NOT NECESSARILY, NO.

2 Q. DID YOU, WHAT DID YOU THINK WOULD HAPPEN TO
3 NORCAL'S CHANCES TO GET A CONTRACT WITH THE CITY IF
4 MR. MORALES OR AMY DEAN STOOD UP IN THE COUNCIL MEETING AND
5 ARGUED AGAINST THE AWARDING OF THE CONTRACT?

6 A. I THINK IT WOULD HAVE BEEN DIFFICULT TO HAVE THOSE
7 TWO INDIVIDUALS SPEAK OUT AGAINST AN ISSUE AND STILL HAVE IT
8 GO THROUGH.

9 Q. WHY IS THAT?

10 A. BECAUSE I BELIEVE THAT THEY CARRIED AT THE TIME,
11 AND PROBABLY STILL DO, SOME SIGNIFICANT WEIGHT.

12 Q. WEIGHT WITH WHOM?

13 A. WITH THE CITY COUNCIL AND THE MAYOR'S OFFICE.

14 Q. WHY DO YOU BELIEVE THAT?

15 A. I JUST BELIEVE THAT PARTICULAR CITY COUNCIL IS VERY
16 PRO-LABOR.

17 Q. DID YOU ATTEND THE OCTOBER 10 CITY COUNCIL MEETING?

18 A. YES, I DID.

19 Q. IS THERE A PORTION OF THE COUNCIL MEETING WHEN
20 MEMBERS OF THE PUBLIC HAVE AN OPPORTUNITY TO WALK UP TO THE
21 PODIUM AND ADDRESS THE COUNCIL?

22 A. YES.

23 Q. DID ANYONE FROM NORCAL ADDRESS THE COUNCIL?

24 A. I ADDRESSED THE COUNCIL THAT DAY, I BELIEVE, BUT

25 NOT DURING PUBLIC COMMENTS. I THINK I SPOKE DURING THE
26 AGENDA ITEMS. YOU'RE ALSO ALLOWED TO SPEAK THEN.

27 Q. WHAT DID YOU TELL THE COUNCIL?

28 A. OH. YOU KNOW, I DON'T RECALL OFF THE TOP OF MY

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1 HEAD. I THINK I SPOKE TO THEM ABOUT, A LITTLE BIT ABOUT THE
2 COMPANY. IF I RECALL CORRECTLY, I HAD OTHER EMPLOYEES FROM
3 NORCAL THERE, AND I BELIEVE THEY STOOD UP. I THINK I
4 INTRODUCED SOME MANAGERS THAT WOULD BE INVOLVED IN THE
5 TRANSITION SO THEY WOULD HAVE COMFORT.

6 I SEEM TO RECALL ADDRESSING THE LABOR PEACE ISSUE
7 IN TERMS OF SAYING WE'RE AWARE OF IT, COMMITTED TO WORKER
8 RETENTION AND LABOR PEACE. I BELIEVE I SPOKE ABOUT
9 OPERATIONAL ISSUES AS WELL, SOME CONCERNS THAT HAD COME UP
10 FROM, I CAN'T REMEMBER WHO, AND I THINK THERE WERE CONCERNS
11 ABOUT TRANSITION. I MIGHT HAVE ADDRESSED SOMETHING LIKE
12 THAT.

13 Q. DID YOU OR ANYONE ELSE AT THE CITY COUNCIL MEETING
14 BRING UP THE ADDITIONAL COST OF CWS USING TEAMSTERS?

15 A. I DO NOT BELIEVE THAT CAME UP, NO.

16 Q. WHY IS THAT?

17 A. I JUST DON'T BELIEVE IT CAME UP.

18 Q. WHY DIDN'T YOU RAISE THAT ISSUE?

19 A. I SAW NO REASON TO RAISE THAT ISSUE AT THAT TIME.

20 Q. WELL, DID YOU UNDERSTAND AT THE TIME OF THE OCTOBER
21 6, 2000 MEETING AT THE MAYOR'S OFFICE, THAT THE MAYOR ONLY
22 HAD ONE VOTE ON THE COUNCIL?

- 23 A. I UNDERSTOOD THE MAYOR HAD ONE VOTE.
- 24 Q. DID YOU UNDERSTAND THAT IN ORDER FOR THE CITY TO
- 25 PAY MONEY TO A CONTRACTOR, IT REQUIRED AT LEAST A MAJORITY
- 26 VOTE OF THE COUNCIL?
- 27 A. YES.
- 28 Q. DID YOU THINK THAT WHEN THE MAYOR SAID WHATEVER HE

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- 1 SAID ABOUT MORE MONEY FOR CWS USING TEAMSTERS, THAT HE
- 2 ALREADY HAD A MAJORITY VOTE ON THE COUNCIL ON THAT ISSUE?
- 3 A. I DID NOT BELIEVE THAT, NO.
- 4 Q. WELL, WOULDN'T IT BEHOOVE YOU TO SPEAK TO OTHER
- 5 COUNCILMEMBERS TO GET A SENSE OF WHERE THEY WERE ON THE
- 6 ISSUE?
- 7 A. I THINK IT MIGHT HAVE BEHOVED ME TO DO THAT, BUT
- 8 CERTAINLY NOT IN A PUBLIC SETTING.
- 9 Q. WHY?
- 10 A. THAT'S NOT THE PROPER PLACE TO BRING UP AN ISSUE
- 11 YOU DON'T HAVE FULL RESEARCH ON, AND I DIDN'T HAVE FULL
- 12 RESEARCH.
- 13 Q. YOU WEREN'T BASHFUL, APPARENTLY, ABOUT BRINGING UP
- 14 IT UP IN THE MAYOR'S CONFERENCE ROOM, WERE YOU?
- 15 A. IN A ONE-ON-ONE SMALL MEETING, I'M NOT BASHFUL AT
- 16 ALL, FRANKLY. BUT THERE ARE CERTAIN THINGS I HAVE FOUND IN
- 17 MY CAREER THAT DO NOT WORK WELL IN A PUBLIC SESSION IF YOU
- 18 ARE NOT PREPARED TO FULLY TALK ABOUT SOMETHING AND ANSWER
- 19 QUESTIONS, WHICH I WAS NOT.
- 20 Q. YOU TOLD US YOU HAD SOME ONE-ON-ONE MEETINGS WITH

21 OTHER COUNCIL MEMBERS?
22 A. YES.
23 Q. DID YOU BRING UP THE SUBJECT OF EXTRA MONEY FOR CWS
24 USING TEAMSTERS AT ANY OF THE OTHER ONE-ON-ONE MEETINGS THAT
25 YOU HAD WITH OTHER COUNCIL MEMBERS?
26 A. I DID NOT.
27 Q. WHY?
28 A. MOST OF THOSE MEETINGS OCCURRED BEFORE THE WEEK OF

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1 OCTOBER 6, MAYBE WITH THE EXCEPTION OF COUNCIL MEMBER DIAZ.
2 AND AGAIN, I DIDN'T REALLY HAVE ENOUGH INFORMATION TO BRING
3 IT UP WITH HIM. IT WAS A RELATIVELY FRESH IDEA AT THAT
4 POINT.
5 Q. WHY WAS THE LACK OF INFORMATION NOT AN OBSTACLE TO
6 DISCUSSING IT AT THE MEETING WITH THE MAYOR, YET SOMEHOW AN
7 OBSTACLE TO DISCUSSING IT WITH OTHER MEMBERS OF THE COUNCIL?
8 A. AT THAT POINT IN TIME I DIDN'T BRING IT UP WITH
9 OTHER COUNCIL MEMBERS. I DIDN'T FEEL I HAD ENOUGH
10 INFORMATION TO DO THAT.
11 Q. SORRY?
12 A. I DIDN'T FEEL I HAD ENOUGH INFORMATION TO BRING IT
13 UP.
14 Q. WHAT DID THE CITY COUNCIL VOTE TO DO WITH RESPECT
15 TO NORCAL'S PROPOSAL AT THE OCTOBER 10 COUNCIL MEETING?
16 A. IF I RECALL CORRECTLY, THE VOTE WAS TO -- I DON'T
17 BELIEVE THEY VOTED TO FULLY APPROVE THE ISSUANCE OF A
18 CONTRACT TO US FOR THE THREE AREAS. I THINK THEY ASKED THE

19 CITY AUDITOR TO COME IN AND ANALYZE SOME OF THE OPERATIONAL
20 ASSUMPTIONS AND TRANSITIONAL ISSUES AND RESET ANOTHER VOTE
21 FOR SOME TIME IN DECEMBER, SO IT WAS SORT OF CONDITIONAL AT
22 THAT POINT.

23 Q. DID YOU SAY SEPTEMBER OR DECEMBER?

24 A. DECEMBER.

25 Q. WAS THERE ANYTHING ABOUT REFERRING NORCAL'S
26 PROPOSAL TO THE CITY AUDITOR FOR REVIEW?

27 A. YES.

28 Q. AND DID THAT REFERRAL INCLUDE A REVIEW TO LOOK AT

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1 THE FINANCIAL FEASIBILITY OF THE PROPOSAL?

2 A. I BELIEVE IT DID, BUT AS I RECALL IT WAS PRIMARILY
3 FOCUSED ON OPERATIONAL ASSUMPTIONS.

4 Q. OKAY. NOW, GOING BACK TO THIS ADDENDUM BETWEEN
5 NORCAL AND CWS, DID YOU KNOW AT THE TIME YOU SAW THAT
6 DOCUMENT THAT THE ESTIMATED COST ON AN ANNUAL BASIS OF
7 SWITCHING FROM LONGSHOREMEN TO TEAMSTERS WAS APPROXIMATELY
8 TWO MILLION A YEAR?

9 A. I DID NOT KNOW THAT AT THE TIME, NO.

10 Q. DID YOU SUBSEQUENTLY LEARN THAT?

11 A. I DID.

12 Q. WHEN DID YOU FIRST LEARN THAT?

13 A. I'M NOT CERTAIN WHEN I ACTUALLY FOUND THAT OUT, BUT
14 I UNDERSTAND IT TO BE SOMETHING LIKE 2.2 MILLION A YEAR-ISH,
15 BUT I DON'T KNOW EXACTLY.

16 Q. DID YOU KNOW ABOUT IT BEFORE THE SECOND CITY

17 COUNCIL VOTE ON DECEMBER 12, 2000?

18 A. I DON'T KNOW IF I DID.

19 Q. WHEN YOU WORKED ON PUTTING NORCAL'S PROPOSAL
20 TOGETHER, I TAKE IT YOU HAD TO COMPUTE SOME ESTIMATE OF
21 COSTS AND EXPENSES SO YOU HAD SOME SENSE OF POTENTIAL
22 PROFITS NORCAL COULD MAKE ON THE DEAL, RIGHT?

23 A. ABSOLUTELY.

24 Q. AND WAS, BASED ON THE ORIGINAL PROPOSAL WITH CWS
25 USING ILWU WORKERS AND NO REQUIREMENT THAT NORCAL PAY ANY
26 MONEY TO CWS, WAS THE NET PROFIT ON THAT ANNUAL BASIS
27 SOMETHING ON THE ORDER OF ONE MILLION A YEAR?

28 A. I DON'T RECALL THE EXACT NUMBER, BUT THAT SOUNDS

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1 ABOUT RIGHT. THAT'S ABOUT FIVE PERCENT, SOUNDS ABOUT RIGHT.

2 Q. IF NORCAL HAD NOT BEEN REIMBURSED BY THE CITY FOR
3 THE EXTRA COST OF CWS USING TEAMSTERS AND HAVE TO PAY THIS
4 ESTIMATED TWO MILLION PER YEAR OVER FIVE YEARS TO CWS, THAT
5 WOULD MEAN THAT NORCAL'S ESTIMATED ONE MILLION PER YEAR
6 PROFIT WOULD TURN INTO A ONE MILLION PER YEAR LOSS OVER FIVE
7 YEARS, RIGHT?

8 A. USING THAT MATH, YES.

9 Q. WHEN YOU SAW THIS ADDENDUM, DID YOU TALK TO ANYONE
10 AT NORCAL TRYING TO GET A HANDLE AS TO HOW MUCH LIABILITY
11 NORCAL WAS UNDERTAKING WITH RESPECT TO CWS?

12 A. AT THE TIME THAT THIS WAS SIGNED, I DON'T BELIEVE
13 THAT ANYBODY HAD ANY ESTIMATES WHAT THAT LIABILITY WAS AS
14 FAR AS I KNOW.

15 Q. WELL, APPARENTLY MR. SANGIACOMO HAD AN ESTIMATE.
16 THAT'S WHY I'M ASKING IF YOU TALKED TO ANYONE.

17 A. I DON'T KNOW IF HE DID OR DID NOT HAVE AN ESTIMATE.

18 Q. DID IT -- ALTHOUGH YOU DIDN'T HAVE AN ESTIMATE, YOU
19 KNEW THAT THESE WERE GOING TO BE SUBSTANTIAL COSTS, RIGHT?

20 A. I KNEW THAT THEY COULD BE SUBSTANTIAL, BUT I DIDN'T
21 KNOW HOW SUBSTANTIAL.

22 Q. SOMETHING IN THE ORDER OF MILLIONS, RIGHT?

23 A. YOU KNOW, I DIDN'T EVEN HAVE A SENSITIVITY TO THE
24 TOTAL. I JUST KNEW THEY WERE MORE -- I WAS TOLD THEY WERE
25 MORE BY CALIFORNIA WASTE SOLUTIONS, BUT I MYSELF DID NOT
26 KNOW.

27 Q. AT THE TIME THAT THIS ADDENDUM WAS SIGNED, DID YOU
28 BELIEVE THAT NORCAL HAD A COMMITMENT OR VERBAL COMMITMENT

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1 FROM THE CITY TO REIMBURSE IT FOR THE EXTRA COSTS OF CWS
2 USING THE TEAMSTERS?

3 A. NO.

4 Q. DID YOU HAVE CONCERNS ABOUT NORCAL UNDERTAKING THIS
5 LIABILITY WITH NO VERBAL COMMITMENT FROM THE CITY TO
6 REIMBURSE IT?

7 A. YES.

8 Q. DID YOU EXPRESS THOSE CONCERNS TO ANYONE AT NORCAL?

9 A. YES.

10 Q. WHO?

11 A. TO MY BOSS.

12 Q. THAT WAS ARCHIE HUMPHREY?

- 13 A. YES.
- 14 Q. WHAT DID HE SAY?
- 15 A. UH -- HE ESSENTIALLY TOLD ME NOT TO BE CONCERNED
16 ABOUT IT, TO GO ON WITH WHAT I WAS DOING, WHICH WAS GOING
17 FORWARD WITH THE CONTRACT, GETTING STARTED UP, GOING TO
18 OPERATIONAL THINGS I WAS IN CHARGE OF AND LET THEM KIND OF
19 WORRY ABOUT THAT.
- 20 Q. DID THAT MAKE SENSE TO YOU?
- 21 A. AT NORCAL, YES.
- 22 Q. WHY DID YOU SAY THAT?
- 23 A. IT WAS NOT AN UNUSUAL ARRANGEMENT. NORCAL IS A
24 PRIVATELY HELD, FAIRLY SMALL COMPANY, AND THE MANAGEMENT
25 TEAM, EXECUTIVE MANAGEMENT TEAM, HAS A LOT OF CONTROL.
- 26 Q. NONETHELESS, I ASSUME THEY ARE IN BUSINESS TO MAKE
27 A PROFIT, NOT A LOSS, RIGHT?
- 28 A. GENERALLY SPEAKING, I THINK THAT WOULD BE TRUE.

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- 1 Q. BY THE WAY, WHY DID YOU LEAVE NORCAL IN FEBRUARY
2 OF '03?
- 3 A. IT WAS AN OPPORTUNITY TO GO TO A MUCH BIGGER
4 COMPANY, BOTH THE OPPORTUNITY AND PROFESSIONALLY.
- 5 Q. DID YOU TAKE A CUT IN PAY?
- 6 A. I DID NOT.
- 7 Q. DID YOU GET AN INCREASE IN PAY?
- 8 A. YES, I DID.
- 9 Q. DID YOU -- AT YOUR NEW COMPANY, ALLIED WASTE, DID
10 YOU HAVE LESS RESPONSIBILITY THAN YOU HAD AT NORCAL?

11 A. NO.

12 Q. WHY IS THAT? AT NORCAL YOU WERE A MANAGER THAT
13 COVERED A NUMBER OF JURISDICTIONS. AT ALLIED WASTE YOU WERE
14 JUST, YOU HAD A SMALLER TERRITORY, SO TO SPEAK, RIGHT?

15 A. SMALLER GEOGRAPHICALLY, BUT IN TERMS OF ASSETS AND
16 BUSINESS, MORE BUSINESS.

17 Q. DOES ALLIED WASTE DO ANYTHING OTHER THAN MATERIALS
18 COLLECTION AND PROCESSING?

19 A. ALLIED WASTE IS A FULLY INTEGRATED SOLID WASTE
20 MANAGEMENT COMPANY. WE HAVE, NATIONWIDE WE HAVE COLLECTION
21 COMPANIES, WE HAVE TRANSFER STATIONS, WE HAVE MATERIAL
22 RECOVERY FACILITIES AND LANDFILLS.

23 Q. AT SOME POINT DID YOU LEARN THAT CWS HAD ENTERED
24 INTO AN UNDERSTANDING WITH THE TEAMSTERS?

25 A. YES.

26 Q. WAS THAT BEFORE THE SECOND VOTE ON DECEMBER 12,
27 2000?

28 A. I BELIEVE IT WAS. I'M NOT AS POSITIVE ON THAT, I

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1 SEEM TO RECALL THAT I THINK THEY ENTERED INTO AN M. O. U. OF
2 SOME SORT, BUT I BELIEVE IT TOOK THEM MONTHS TO ACTUALLY
3 ENTER INTO A COLLECTIVE BARGAINING AGREEMENT, AND THAT MIGHT
4 HAVE BEEN AFTER I LEFT.

5 Q. I'M NOT TALKING ABOUT COLLECTIVE BARGAINING, I AM
6 TALKING ABOUT THE CARD CHECK AGREEMENT.

7 A. YES.

8 Q. DO YOU KNOW WHAT THAT IS?

- 9 A. YES.
- 10 Q. CAN YOU EXPLAIN IT TO THE JURY?
- 11 A. A CARD CHECK AGREEMENT IS ESSENTIALLY AN AGREEMENT
12 BETWEEN A UNION AND A COMPANY THAT SAYS THAT AN ULTIMATE
13 DECISION WILL BE MADE OVER REPRESENTATION OF EMPLOYEES BASED
14 ON A SIMPLE CARD COUNT. AND THERE'S NO VOTE, IT'S A CARD
15 COUNT. IF IT'S A MAJORITY PLUS ONE, THE UNION IS IN. IF
16 IT'S A MAJORITY MINUS ONE, THE UNION IS NOT IN.
- 17 Q. IT'S A WAY OF SHORTCUTTING THE NLRB ELECTION
18 PROCESS?
- 19 A. IT'S A WAY AROUND THE PROCESS, YEAH.
- 20 Q. AT SOME POINT BEFORE THE SECOND COUNCIL VOTE OF
21 DECEMBER 12, 2000, DID YOU LEARN THAT CWS HAD ENTERED INTO A
22 CARD CHECK AGREEMENT WITH THE TEAMSTERS?
- 23 A. YES.
- 24 Q. HAD YOU ENCOURAGED CWS TO ENTER INTO SOME KIND OF
25 AGREEMENT WITH THE TEAMSTERS BEFORE THE SECOND COUNCIL VOTE?
- 26 A. I CERTAINLY DIDN'T DISCOURAGE IT. I TOLD THEM I
27 THOUGHT IT WAS FINE AS LONG AS THEY WERE OKAY WITH IT.
- 28 Q. YOU TOLD THEM WHAT?

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- 1 A. I SAID I THOUGHT IT WAS FINE AS LONG AS THEY WERE
2 OKAY WITH IT. IT'S THEIR BUSINESS TO RUN.
- 3 Q. THAT'S NOT THE QUESTION. DID YOU ENCOURAGE CWS TO
4 ENTER INTO SUCH AN AGREEMENT WITH TEAMSTERS?
- 5 A. I DON'T BELIEVE SO, NO.
- 6 Q. DID YOU HAVE ANY DISCUSSIONS WITH DAVID DUONG ABOUT

7 SUCH AN AGREEMENT BEFORE HE EXECUTED IT?
8 A. I BELIEVE I DID, YES.
9 Q. HOW MANY SUCH DISCUSSIONS DID YOU HAVE?
10 A. LESS THAN A HALF-DOZEN, I WOULD SAY. I DON'T
11 RECALL SPECIFICALLY.
12 Q. WHY DID YOU HAVE THOSE DISCUSSIONS WITH DAVID DUONG
13 ABOUT THIS SUBJECT?
14 A. THEY WOULD COME UP DURING GENERAL MEETINGS WE WOULD
15 HAVE, WHETHER THEY WERE PHONE CONVERSATIONS OR FACE-TO-FACE
16 MEETINGS, RELATED TO PERMITTING ISSUES. HE WAS TRYING TO
17 GET THE FACILITY PERMITTED, AND WE WERE WORKING ON A LOT OF
18 THINGS, WORKER RETENTION, JOB FAIRS, ET CETERA. THEY WOULD
19 COME UP DURING CONVERSATIONS.
20 Q. ARE YOU TELLING US YOU DIDN'T CARE ONE WAY OR THE
21 OTHER WHETHER OR NOT MR. DUONG OR CWS ENTERED INTO A CARD
22 CHECK AGREEMENT WITH THE TEAMSTERS BEFORE THE FINAL COUNCIL
23 VOTE ON THE NORCAL CONTRACT?
24 A. I'M NOT SAYING THAT AT ALL.
25 Q. WHAT ARE YOU SAYING?
26 A. I'M SAYING I DIDN'T TELL HIM TO DO IT, BECAUSE IT'S
27 NOT MY BUSINESS TO RUN HIS BUSINESS.
28 Q. I DIDN'T ASK IF YOU TOLD HIM TO DO IT. I ASKED IF

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1 YOU ENCOURAGED HIM TO DO IT.
2 A. AGAIN, I DON'T BELIEVE I ENCOURAGED HIM TO DO IT.
3 Q. OKAY, DID YOU SUGGEST TO HIM THAT NORCAL'S CHANCES
4 OF GETTING THE CONTRACT THROUGH THE SECOND AND FINAL VOTE OF

5 THE CITY COUNCIL WOULD BE IMPROVED IF HE ENTERED INTO SUCH
6 AN AGREEMENT?

7 A. I DO BELIEVE I TOLD HIM THAT, NOT NECESSARILY IN
8 THOSE WORDS, BUT I THINK WE TALKED ABOUT THAT, CERTAINLY.

9 Q. YOU WOULD NOT CHARACTERIZE THAT AS ENCOURAGING HIM
10 TO SIGN A CARD CHECK AGREEMENT WITH THE TEAMSTERS?

11 A. NOT NECESSARILY, NO.

12 Q. DID YOU THINK WHEN YOU TOLD HIM THAT, YOU WERE
13 DISCOURAGING HIM FROM SIGNING AN AGREEMENT?

14 A. NO. I TOLD YOU I DIDN'T DISCOURAGE HIM.

15 Q. DID YOU THINK THAT STATEMENT WAS COMPLETELY NEUTRAL
16 ON THE SUBJECT OF WHETHER OR NOT HE WOULD ENTER INTO THE
17 AGREEMENT?

18 A. I FELT IT WAS FACTUAL, AND THAT'S WHAT I BELIEVED
19 WAS GOING TO HAPPEN.

20 Q. WELL, BETWEEN THE FIRST COUNCIL VOTE ON OCTOBER 10
21 AND THE DECEMBER 12 FINAL COUNCIL VOTE, DID YOU HAVE FURTHER
22 DISCUSSIONS WITH EITHER THE MAYOR OR JOE GUERRA ABOUT THE
23 PROGRESS CWS WAS MAKING OR NOT MAKING IN CHANGING FROM
24 LONGSHOREMEN TO TEAMSTERS?

25 A. I DON'T BELIEVE I HAD ANY CONVERSATION WITH THE
26 MAYOR. I MAY HAVE HAD CONVERSATIONS WITH JOE.

27 Q. WOULD YOU TELL US ABOUT THOSE CONVERSATIONS WITH
28 JOE GUERRA?

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1 A. I'M TRYING TO RECALL, BUT I SEEM TO RECALL THAT
2 THERE MIGHT HAVE BEEN SOME PHONE CONVERSATIONS, JUST STATUS

3 UPDATES, BASICALLY, ON LABOR PEACE, AND HOW IS IT GOING,
4 WHERE ARE YOU AT.

5 Q. WHEN YOU SAY STATUS UPDATES ON LABOR PEACE, ARE YOU
6 SUGGESTING THAT ALL YOU TOLD JOE GUERRA WAS, WE'RE MAKING
7 PROGRESS ON LABOR PEACE, OR DID YOU USE THE WORD "TEAMSTER"
8 IN THESE DISCUSSIONS?

9 A. I THINK THE WORD "TEAMSTER" CAME UP AND ILWU CAME
10 UP.

11 Q. SORRY?

12 A. I BELIEVE THE TEAMSTERS AND ILWU BOTH CAME UP.

13 Q. TELL US WHAT YOU REMEMBER OF THESE CONVERSATIONS.

14 A. GENERALLY, I THINK THE DISCUSSIONS WERE ABOUT, YOU
15 KNOW, IS DAVID WORKING WITH THE TEAMSTERS, AND ON A
16 RESOLUTION TO RESOLVE IT, WHATEVER THE RESOLUTION MAY BE.

17 MY RESPONSE WAS, IT'S BEING WORKED ON AS FAR AS I
18 KNOW. I'M IN THE MIDDLE OF --

19 Q. LET ME ASK YOU THIS. YOU PUT A PROPOSAL TOGETHER
20 WHICH INCLUDED A COPY OF A COLLECTIVE BARGAINING AGREEMENT
21 OR MEMORANDUM OF UNDERSTANDING BETWEEN CWS AND ILWU, RIGHT?

22 A. I DON'T THINK SO.

23 Q. WELL, IT MADE, AT LEAST MADE REFERENCE TO SUCH AN
24 AGREEMENT, RIGHT?

25 A. I THINK IT MADE REFERENCE TO THEIR EXISTING
26 COLLECTIVE BARGAINING AGREEMENT. WE SUBMITTED A COPY OF AN
27 M. O. U. BETWEEN NORCAL AND LOCAL 350.

28 Q. RIGHT. I'M TALKING ABOUT CWS AND ILWU.

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1 A. I DON'T THINK WE PUT THEIR CBA IN THERE. I DON'T
2 BELIEVE THAT WAS PART OF OUR PROPOSAL.

3 Q. DIDN'T THE PROPOSAL SAY SOMETHING ABOUT CWS
4 EXTENDING THEIR COLLECTIVE BARGAINING AGREEMENT WITH ILWU TO
5 SAN JOSE?

6 A. I BELIEVE IT MENTIONED IT, BUT I DON'T THINK IT WAS
7 INCLUDED.

8 Q. LET ME BACK UP. DO YOU KNOW WHETHER OR NOT, AT THE
9 TIME THE NORCAL PROPOSAL WAS FIRST SUBMITTED IN JULY OF
10 2000, WAS THERE ANY M. O. U. OR WRITTEN UNDERSTANDING BETWEEN
11 CWS AND ILWU THAT COVERED A NEW SAN JOSE FACILITY IN THE
12 EVENT THAT NORCAL RECEIVED THE CONTRACT?

13 A. I'M NOT CERTAIN OF THAT.

14 Q. WOULD LOOKING AT THE PROPOSAL HELP CLARIFY THAT IN
15 YOUR MIND?

16 A. I DON'T KNOW THAT IT WOULD. I NEVER SAW AN M. O. U.
17 OR A CBA THAT SPECIFICALLY SAID IT COVERED SAN JOSE.

18 Q. BEAR WITH ME A MOMENT. I HAVE TO LOCATE A
19 DOCUMENT.

20 A. SURE.

21 Q. I'M TRYING TO CLARIFY THE SITUATION WITH CWS AND
22 ILWU. THEY HAD AN EXISTING CBA THAT COVERED OAKLAND, AND
23 WHAT THE PROPOSAL SUGGESTED TO THE CITY WAS THAT THAT WOULD
24 BE EXTENDED TO COVER SAN JOSE, NOT THAT IT HAD TO BE
25 EXTENDED TO COVER SAN JOSE. IS THAT THE SITUATION?

26 A. YEAH. MY UNDERSTANDING FROM CONVERSATIONS I HAD
27 WITH DAVID DUONG, WHO WAS PRESIDENT OF CWS, AND A FEW OF HIS
28 STAFF MEMBERS WAS THAT THEIR CBA HAD THE ABILITY TO BE

1 EXTENDED AS FAR SOUTH AS FRESNO COUNTY. SHOULD THEY FAIL TO
2 GET THE FACILITIES, THERE IS NO MARKET.

3 Q. THAT WOULD HAVE INCLUDED SAN JOSE?

4 A. YES, AND THAT WAS THEIR INTENT. I CAN'T SPEAK TO
5 THEIR INTENT, BUT I BELIEVE THE INTENT WAS TO BUILD IN SAN
6 JOSE AND HAVE THE CBA EXTEND DOWN.

7 Q. LET ME WAIT TO SPEAK TO MR. DUONG AND WE'LL CLARIFY
8 THAT. DID YOU EVER SEE A COPY OF THE AGREEMENT BETWEEN THE
9 TEAMSTERS AND CWS?

10 A. THE COLLECTIVE BARGAINING AGREEMENT?

11 Q. NO, THE M. O. U. , THE CARD CHECK AGREEMENT.

12 A. I BELIEVE I DID, YES.

13 Q. WHEN DID YOU SEE THAT?

14 A. I COULDN'T TELL YOU SPECIFICALLY.

15 Q. WAS IT SOME TIME CONTEMPORANEOUS WITH THE
16 AGREEMENT, OR IT WAS YEARS LATER?

17 A. I BELIEVE IT WAS RIGHT AROUND THE TIME THE
18 AGREEMENT WAS SIGNED.

19 Q. HOW WAS IT THAT YOU HAPPENED TO SEE THAT AGREEMENT?

20 A. UH -- I BELIEVE DAVID SENT ME A COPY.

21 Q. WHY IS THAT?

22 A. SO I WOULD KNOW IT HAD BEEN SIGNED AND THAT HE WAS
23 ACHIEVING LABOR PEACE, I GUESS.

24 Q. WHY SHOULD DAVID DUONG, THE PRESIDENT OF A SEPARATE
25 COMPANY, BE CONCERNED ABOUT WHETHER YOU KNEW WHAT AGREEMENT
26 HE HAD ENTERED INTO WITH THE TEAMSTERS?

27 A. UH -- I THINK DAVID WAS JUST KEEPING ME IN THE
28 LOOP. WE WERE TALKING PRETTY MUCH ON A DAILY BASIS ON

1 ISSUES, STARTUP RELATED, BUILDING RELATED. IT WAS JUST PART
2 OF THE CONVERSATIONS.

3 Q. DO YOU KNOW IF DAVID SPOKE DIRECTLY WITH JOE AND
4 THE MAYOR OR WHETHER YOU WERE KIND OF THE POINT PERSON,
5 HAVING PUT THE PROPOSAL TOGETHER, FOR CONTACTING THE MAYOR
6 OR JOE GUERRA ABOUT THESE LABOR PEACE ISSUES?

7 A. I'M NOT SURE IF DAVID HAD ANY INTERACTION WITH JOE
8 OR RON GONZALES OR ANYBODY ELSE.

9 Q. YOU TOLD US THAT BETWEEN THE FIRST VOTE AND THE
10 SECOND VOTE YOU HAD HAD SEVERAL CONVERSATIONS WITH
11 JOE GUERRA ABOUT LABOR PEACE, RIGHT?

12 A. I BELIEVE THOSE CAME UP DURING THIS CONVERSATION,
13 YES.

14 Q. IN AT LEAST ONE OR MORE OF THOSE CONVERSATIONS,
15 MR. GUERRA INQUIRED OF YOU WHETHER OR NOT DAVID HAD SIGNED
16 AN M. O. U. WITH THE TEAMSTERS, RIGHT?

17 A. I DON'T BELIEVE HE ASKED ME IF HE HAD SIGNED AN
18 M. O. U. I THINK HE ASKED FOR AN UPDATE ON LABOR PEACE.

19 Q. WAS LABOR PEACE SOME KIND OF CODE WORD FOR CWS
20 USING THE TEAMSTERS?

21 A. NO, LABOR PEACE WAS LABOR PEACE. I DON'T KNOW THAT
22 WAS A CODE WORD OR ANYTHING.

23 Q. MAYBE CODE WORD IS NOT THE RIGHT TERM. DID LABOR
24 PEACE COME TO BE UNDERSTOOD AS SHORTHAND FOR GETTING CWS TO
25 SIGN WITH THE TEAMSTERS?

26 A. NOT NECESSARILY. I DON'T THINK SO.

27 Q. WAS THERE ANY RELATIONSHIP BETWEEN LABOR PEACE AND
28 CWS SIGNING WITH THE TEAMSTERS?

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1 A. UH -- YEAH. I THINK HAD THEY NOT, LABOR PEACE MAY
2 NOT HAVE BEEN VERY PEACEFUL POTENTIALLY.

3 Q. IT MAY NOT HAVE BEEN ACHIEVED?

4 A. IT MAY NOT HAVE BEEN ACHIEVED.

5 Q. WHEN YOU FIRST READ THE RFP WAY BACK IN THE FIRST
6 HALF OF 2000 AND SAW THE DESCRIPTION OF LABOR PEACE, YOU DID
7 NOT CONSTRUE IT AS PRECLUDING CWS FROM USING ILWU WORKERS,
8 RIGHT?

9 A. I DID NOT.

10 Q. BUT AFTER THE OCTOBER 6, 2000 MEETING WITH THE
11 MAYOR, YOU BELIEVED THAT LABOR PEACE REQUIRED CWS TO USE
12 TEAMSTERS.

13 A. AFTER THAT DAY, AND TO A CERTAIN EXTENT BEFORE THAT
14 DATE AS WELL.

15 Q. WHEN YOU SAY "TO A CERTAIN EXTENT BEFORE THAT DATE
16 AS WELL," AS LATE AT OCTOBER 5, YOU STILL CONTEMPLATED THAT
17 CWS WOULD USE ILWU WORKERS, CORRECT?

18 A. OUR DESIRE WAS STILL TO USE ILWU WORKERS AND CWS,
19 BECAUSE THAT WAS THEIR DESIRE, SO ABSOLUTELY.

20 Q. AND YOU DIDN'T THINK THAT THAT WAS INCONSISTENT
21 WITH LABOR PEACE ON THURSDAY, OCTOBER 5, RIGHT?

22 A. NO, I DIDN'T.

23 Q. YET AFTER THE FRIDAY, OCTOBER 6 MEETING, IN YOUR
24 MIND LABOR PEACE WAS SYNONYMOUS WITH CWS USING TEAMSTERS?

25 A. I WOULD SAY THAT IT BECAME MORE SYNONYMOUS, AND
26 AFTER THE MEETING WITH AMY DEAN AND BOB MORALES AND THEIR

27 ATTORNEY THAT IT BECAME EVEN MORE SO.

28 Q. WHATEVER DOUBT THERE MAY HAVE BEEN, IF ANY, AFTER

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1 OCTOBER 6, DISAPPEARED AFTER THE MEETING WITH AMY DEAN AND
2 BOB MORALES IN THE BASEMENT OF 840 NORTH FIRST STREET?

3 A. YES.

4 MR. FINKELSTEIN: WOULD THIS BE A GOOD TIME TO
5 TAKE THE EVENING RECESS? I THINK WE' LL RESUME AT 10: 30
6 TOMORROW MORNING. SO WE' LL SEE YOU AT 10: 30.

7 THE FOREPERSON WANTS TO REMIND YOU OF THE WITNESS
8 ADMONITION ABOUT CONFIDENTIALITY.

9 THE FOREMAN: I READ YOU THAT ADMONITION BEFORE.
10 DO YOU WANT ME TO REPEAT IT TO YOU?

11 THE WITNESS: NO, I UNDERSTOOD IT.

12 THE FOREMAN: THAT REMAINS THE ADMONITION.

13 THE WITNESS: THANK YOU.

14 MR. FINKELSTEIN: THANK YOU VERY MUCH. WE' LL SEE
15 YOU AT 10: 30 TOMORROW MORNING.

16 (COURT WAS ADJOURNED FOR THE DAY.)

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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 2ND AND 6TH DAYS OF MARCH, 2006.

THAT I REPORTED THE SAME IN STENOTYPE, 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 96-02, BY SEALING THROUGH REDACTION OF ALL REFERENCES, IF ANY, TO JUROR-IDENTIFYING INFORMATION, INCLUDING BUT NOT LIMITED TO NAMES, ADDRESSES AND TELEPHONE NUMBERS.

DATED THIS 25TH DAY OF JUNE, 2006.

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SUE HERFURTH, C. S. R.
CERTIFICATE NO. 9645

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