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

---000---

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SAN JOSE, CALIFORNIA

VOLUME 6
PAGES 805-1012

MARCH 7, 2006
MARCH 14, 2006
MARCH 22, 2006
MARCH 30, 2006

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APPEARANCES:

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

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1 SAN JOSE, CALIFORNIA

MARCH 7, 2006

2

3

PROCEEDINGS:

4

(ROLL WAS TAKEN BY THE FOREMAN.)

5

MR. FINKELSTEIN: THANK YOU VERY MUCH.

6

MEMBERS OF THE JURY, I HAVE TO REPORT TO YOU THAT
7 THE WITNESS, BILL JONES, IS NOT HERE TODAY AND SOME OTHER
8 LEGAL MATTERS HAVE ARISEN WHICH NEED NOT CONCERN YOU. BUT
9 BECAUSE OF THAT WE'RE NOT GOING TO BE ABLE TO TAKE HIS
10 TESTIMONY TODAY AND PROBABLY WILL NOT BE ABLE TO TAKE
11 TESTIMONY FROM ANY OTHER NORCAL WITNESSES THIS WEEK.

12

13

14

15

I UNDERSTAND THE FOREMAN HAS ADVISED YOU INFORMALLY
OF THE RESHEDULING PROBLEM, AND OUR NEXT REGULARLY SCHEDULED
DATE WILL BE A WEEK FROM TODAY, WHICH WILL BE TUESDAY THE 14TH
AT 10:00 A.M.

16

17

18

19

I SHOULD NOTE FOR THE RECORD THAT IT'S NOW ALMOST
10:41 A.M. THE WITNESS WAS DIRECTED TO RETURN HERE AT 10:00.

THERE BEING NO OTHER BUSINESS, I RECOMMEND THAT WE
ADJOURN THIS MORNING.

20

21

22

23

24

THE FOREMAN: LET US ADJOURN UNTIL NEXT TUESDAY, THE
14TH, AT 10:00 O'CLOCK.

(COURT WAS ADJOURNED FOR THE DAY.)

25
26
27
28

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1 SAN JOSE, CALI FORNIA MARCH 14, 2006

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3

PROCEEDINGS:

4

(ROLL WAS TAKEN BY THE FOREPERSON.)

5

6

MR. FINKELSTEIN: THANK YOU VERY MUCH. BEFORE WE
CALL THE NEXT WITNESS, DO ANY JURORS HAVE ANY QUESTIONS ABOUT
ANYTHING RELATED TO THE CASE?

7

8

A JUROR: YES, I HAVE A QUESTION. WHAT DOES LABOR
PEACE MEAN?

9

10

11

12

13

14

15

16

17

18

19

20

21

MR. FINKELSTEIN: WELL, APPARENTLY IT MEANS
DIFFERENT THINGS TO DIFFERENT PEOPLE. WE'VE TAKEN EVIDENCE ON
THIS POINT, I'LL REVIEW THAT WITH YOU LATER ON, BUT IT SEEMS
TO ME AN ORDINARY INFERENCE BASED ON THE EVIDENCE AND
DOCUMENTS WE HAVE, INCLUDING AN OCTOBER 27 MEMORANDUM FROM THE
CITY ATTORNEY'S OFFICE DISCUSSING AGREEMENTS AND OTHER ISSUES,
LABOR PEACE, BUT I THINK A FAIR READING OF ALL THAT IS IT
MEANS MINIMIZING THE PROBABILITY OF LABOR DISRUPTION. IT'S A
VIEW TOWARDS NOT INTERRUPTING THE COLLECTION OF THE TRASH. I
THINK THAT'S A FAIR READING BASED ON THE EVIDENCE WE HAVE.
ALTHOUGH, AS YOU RECALL, SOME PEOPLE THINK IT MEANS TO HAVE
THE TEAMSTERS.

22

A JUROR: CAN YOU COMMENT ON WHY NORCAL COULDN'T
Page 4

23 TESTIFY LAST WEEK?

24 MR. FINKELSTEIN: NO, IT HAS TO DO WITH LEGAL
25 MATTERS THAT ARE NOT EVIDENTIARY, AND THEREFORE IT HAS TO DO
26 WITH VARIOUS PRIVILEGES. AND GENERALLY SPEAKING, ASSERTION OF
27 A PRIVILEGE IS A RIGHT SOMEONE HAS NOT TO ANSWER CERTAIN
28 QUESTIONS OR NOT TO PRODUCE CERTAIN EVIDENCE. AND YOU CANNOT

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1 DRAW A NEGATIVE INFERENCE FROM THE FACT SOMEONE ASSERTS A
2 PRIVILEGE. YOU HAVE TO DISREGARD IT, AS IF IT NEVER HAPPENED,
3 AND YOU CAN'T USE THAT AS SOMETHING UPON WHICH TO BASE ANY
4 ACTION.

5 (PAGE 809, LINES 5 THROUGH 23 HAVE BEEN REDACTED AND
6 ARE UNDER SEAL.)

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24 ANY OTHER QUESTIONS?
25 WHY DON' T WE ASK MR. DUONG TO STEP I N.
26 DAVID DUONG,
27 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN,
28 TESTIFIED AS FOLLOWS:

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1 THE WITNESS: I DO.
2 MR. FINKELSTEIN: WHY DON' T YOU TAKE A MOMENT AND
3 ADJUST THE CHAIR OR THE MICROPHONE SO I T' S CLOSER TO YOU.
4 EXAMINATION:
5 BY MR. FINKELSTEIN:
6 Q. COULD YOU TELL US YOUR FULL NAME FOR THE RECORD,
7 PLEASE?
8 A. DAVID TRUNG DUONG. T-R-U-N-G, LAST NAME D-U-O-N-G.
9 Q. WHERE ARE YOU EMPLOYED, MR. DUONG?
10 A. I ' M THE PRESIDENT AND OWNER OF CALI FORNIA WASTE
11 SOLUTIONS.
12 Q. AND I S CALI FORNIA WASTE SOLUTIONS ALSO KNOWN AS CWS?
13 A. YES.
14 Q. I WANT TO START BY ASKING YOU SOME QUESTIONS ABOUT
15 YOUR BACKGROUND AND HI STORY. COULD YOU START BY TELLING US
16 WHERE YOU WERE BORN?
17 A. I WAS BORN I N SAIGON, VIETNAM.
18 Q. AND WHEN DID YOU LEAVE VIETNAM?

- 19 A. 1976.
- 20 Q. AND HOW DID YOU LEAVE?
- 21 A. BY BOAT.
- 22 Q. AND COULD YOU TELL US A LITTLE ABOUT THIS BOAT, HOW
- 23 BIG OR SMALL IT WAS?
- 24 A. IT'S 16 FEET LONG BOAT, PROBABLY AROUND SIX FEET
- 25 WIDE.
- 26 Q. HOW MANY PEOPLE WERE ON THE BOAT?
- 27 A. 23 PEOPLE.
- 28 Q. AND DID YOU HAVE FAMILY MEMBERS WITH YOU ON THIS

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- 1 BOTH?
- 2 A. YES, ALL FAMILY MEMBERS.
- 3 Q. HOW MANY FAMILY MEMBERS WERE WITH YOU?
- 4 A. ALL 23.
- 5 Q. I'M SORRY?
- 6 A. ALL 23 PEOPLE.
- 7 Q. YOU WERE, ALL THE PEOPLE ON THE BOAT WERE YOUR
- 8 FAMILY?
- 9 A. YES. RELATIVES, FAMILY.
- 10 Q. AND HOW LONG WERE YOU AT SEA?
- 11 A. FIVE DAYS, FOUR NIGHTS.
- 12 Q. OKAY. AND AT SOME POINT I TAKE IT YOU WERE RESCUED
- 13 WHILE ON THE BOAT AT SEA?
- 14 A. YES.
- 15 Q. WHERE DID YOU GO?
- 16 A. WE END UP DELIVERED TO THE PHILIPPINES.

- 17 Q. WERE YOU STAYING IN SOME KIND OF CAMP IN THE
18 PHILIPPINES?
19 A. YES, A REFUGEE CAMP.
20 Q. HOW LONG DID YOU STAY IN THE REFUGEE CAMP IN THE
21 PHILIPPINES?
22 A. 18 MONTHS.
23 Q. AND BEFORE LEAVING VIETNAM, DID YOU DO ANY KIND OF
24 WORK THERE?
25 A. I HELP MY FATHER. HE OWNED THE LARGEST PAPER MILL IN
26 SOUTH VIETNAM.
27 Q. SO THE FAMILY HAD A PAPER MILL BUSINESS?
28 A. YES.

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- 1 Q. WHAT LEVEL OF SCHOOLING DID YOU COMPLETE BEFORE
2 LEAVING VIETNAM?
3 A. HIGH SCHOOL.
4 Q. IN SOME COUNTRIES HIGH SCHOOL MEANS SOMETHING
5 DIFFERENT THAN IT DOES IN THIS COUNTRY. WAS THE HIGH SCHOOL
6 YOU COMPLETED IN VIETNAM A FOUR-YEAR PROGRAM?
7 A. YES.
8 Q. AND IS IT SIMILAR TO HIGH SCHOOL IN THIS COUNTRY, OR
9 IS IT DIFFERENT?
10 A. I THINK IT'S DIFFERENT.
11 Q. HOW IS IT DIFFERENT?
12 A. HIGH SCHOOL OVER THERE, I THINK HIGH SCHOOL IS NOT IN
13 SECOND LANGUAGE. OVER THERE YOU ONLY LEARN ONE LANGUAGE. AND
14 IF YOU WANT TO LEARN A SECOND LANGUAGE, YOU HAVE TO GO

- 15 OUTSIDE.
- 16 Q. WHEN YOU WERE IN THE REFUGEE CAMP IN THE PHILIPPINES,
17 DID YOU DO ANY WORK?
- 18 A. YES.
- 19 Q. WHAT KIND OF WORK DID YOU DO?
- 20 A. I DO SOME MAGIC TRICK OUTSIDE.
- 21 Q. I'M SORRY?
- 22 A. DOING SOME MAGIC TRICK, PERFORMING.
- 23 Q. OH, MAGIC TRICKS?
- 24 A. YES, AND BECAUSE THAT'S WHAT I LEARNED IN VIETNAM
25 BACK IN '71, '72, '73, AND ALSO HELPING THE UNITED NATIONS TO
26 HELP THE PEOPLE IN THE CAMP.
- 27 Q. AND HOW LONG DID YOU STAY IN THE PHILIPPINES?
- 28 A. 18 MONTHS.

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- 1 Q. WHERE DID YOU GO AFTER THE PHILIPPINES?
- 2 A. WASHINGTON, D. C.
- 3 Q. AND WHAT DID YOU DO IN WASHINGTON, D. C.? DID YOU
4 WORK THERE?
- 5 A. YES, TWO MONTHS, AS JANITOR FOR HOLIDAY INN.
- 6 Q. WHEN DID YOU LEAVE WASHINGTON, D. C.?
- 7 A. IN DECEMBER.
- 8 Q. HOW LONG DID YOU STAY IN WASHINGTON, D. C.?
- 9 A. TWO MONTHS.
- 10 Q. WHERE DID YOU GO AFTER LEAVING WASHINGTON, D. C.?
- 11 A. SAN FRANCISCO.
- 12 Q. WHY DID YOU GO TO SAN FRANCISCO?

13 A. NUMBER ONE, BECAUSE LIVING IN THE PHILIPPINES AT THE
14 TIME WHEN WE ARRIVED IN WASHINGTON D.C. IS THE TIME THAT IS
15 WINTERTIME. SO YOU WENT FROM HOT PLACE AND SUDDENLY YOU END
16 UP IN A VERY COLD PLACE. EVERY MORNING I TAKE THE BUS TO GO
17 TO WORK AND WERE WAITING FOR THE BUS, IT'S JUST SO FREEZING.

18 Q. SO IT WAS THE WEATHER?

19 A. YEAH, BUT NUMBER TWO WAS BECAUSE MY PARENTS AND MY
20 FAMILY, MY BROTHER AND SISTERS, ARRIVE IN SAN FRANCISCO, BEING
21 SPONSORED BY SOMEONE THERE, SO THEY ARRIVED IN DECEMBER. SO
22 THAT IS WHERE WE COMING BACK TO, YOU KNOW, WITH THE FAMILY.

23 Q. SO YOU WANTED TO BE CLOSE TO YOUR FAMILY?

24 A. YES.

25 Q. SO WHEN YOU WENT TO SAN FRANCISCO, DID YOU DO ANY
26 WORK THERE?

27 A. YES.

28 Q. WHAT KIND OF WORK?

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1 A. I GO TO SCHOOL DAYTIME FOR MY ENGLISH, THEN NIGHTTIME
2 WE GOING AROUND AND COLLECTING MATERIALS LIKE PAPER,
3 BOTTLECAPS, AND ALL THAT, SO WE CAN SELL IT FOR THAT.

4 Q. WHEN YOU WENT AROUND COLLECTING PAPER AND CANS, WHERE
5 DID YOU COLLECT THE PAPERS AND CANS FROM?

6 A. SAN FRANCISCO, AND IT'S FROM ALL AROUND ON THE
7 STREETS AND IT'S IN ALL THE GARBAGE PUT OUT BY ALL THE
8 HIGH-RISE BUILDINGS AT NIGHTTIME.

9 Q. YOU COLLECTED THESE ITEMS FROM THE TRASH LEFT ON THE
10 STREET FOR COLLECTION BY THESE HIGH-RISE BUILDINGS?

- 11 A. YES.
- 12 Q. AND HOW LONG DID YOU DO THAT?
- 13 A. I DO THAT UNTIL PROBABLY ABOUT FIVE YEARS.
- 14 Q. OKAY. I TAKE IT THE MONEY YOU EARN -- HOW DID YOU
- 15 EARN MONEY BY COLLECTING THESE ITEMS?
- 16 A. WE COLLECTING THEM AND WE SORTING THEM FOR DIFFERENT
- 17 GRADES OF MATERIALS, AND WE SELL THEM TO RECYCLING PLANT.
- 18 Q. OKAY. AND AT SOME POINT DID YOU START RUNNING YOUR
- 19 OWN COMPANY?
- 20 A. YES.
- 21 Q. WHAT WAS THE NAME OF THE FIRST COMPANY?
- 22 A. FIRST COMPANY CALLED KOGIDO, K-O-G-I-D-O.
- 23 Q. WAS THAT A PAPER COMPANY?
- 24 A. YES.
- 25 Q. WHAT KIND OF BUSINESS WAS KOGIDO IN?
- 26 A. KOGIDO IS RECYCLING PLANT WHERE WE BUY THE MATERIAL
- 27 FROM OTHER PEOPLE WHO GO AROUND COLLECTING MATERIALS ON THE
- 28 STREET AND SELL IT.

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- 1 Q. AND WHERE WAS THAT BUSINESS LOCATED?
- 2 A. IT'S LOCATED IN OAKLAND.
- 3 Q. WHEN DID YOU START THAT BUSINESS, WHAT YEAR?
- 4 A. WE STARTED IT IN 1983.
- 5 Q. AND WERE ANY OTHER FAMILY MEMBERS IN BUSINESS WITH
- 6 YOU?
- 7 A. YES.
- 8 Q. WHICH FAMILY MEMBERS, DO YOU RECALL?

- 9 A. YES. MY FATHER, MY UNCLE, MYSELF, MY MOTHER-IN-LAW,
10 AND MY AUNT.
- 11 Q. DID YOU HAVE NON-FAMILY MEMBERS WORKING THE BUSINESS?
- 12 A. YES.
- 13 Q. DO YOU REMEMBER APPROXIMATELY HOW MANY?
- 14 A. UH -- PROBABLY AROUND 40 PEOPLE.
- 15 Q. AND AT THAT TIME WAS KOGIDO USING UNION LABOR?
- 16 A. NO.
- 17 Q. SOMETIME LATER DID YOU SELL THE KOGIDO BUSINESS?
- 18 A. YES.
- 19 Q. WHO DID YOU SELL THE KOGIDO BUSINESS TO?
- 20 A. NORCAL WASTE SYSTEMS.
- 21 Q. AND DO YOU REMEMBER THE TERMS OF THE SALE?
- 22 A. YES.
- 23 Q. WHAT WERE THE TERMS OF THE SALE?
- 24 A. THE TERM OF SALE IS NORCAL PAYING US SOME MONEY SO WE
25 CAN PAY ALL OUR DEBT AND LEAVE SOME MONEY FOR OUR MEMBERS SO
26 SOME MEMBERS CAN GO OUT AND BUY, YOU KNOW, HOME OR OTHER
27 BUSINESSES SO THEY CAN START A DIFFERENT BUSINESS.
- 28 Q. SOUNDS LIKE THE TERMS OF THE SALE WAS PART CASH AND

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- 1 PART ASSUMING YOUR DEBTS?
- 2 A. THAT'S CORRECT.
- 3 Q. HOW MUCH WAS THE CASH SUPPOSED TO BE, IF YOU
4 REMEMBER?
- 5 A. I DON'T, BUT IT'S ROUGHLY AROUND \$900,000.
- 6 Q. OKAY. AND DO YOU REMEMBER HOW MUCH DEBT NORCAL

7 ASSUMED IN THIS PURCHASE?
8 A. YES.
9 Q. HOW MUCH?
10 A. A MILLION.
11 Q. AND WAS THIS \$900,000 OR SO CASH SUPPOSED TO BE PAID
12 IMMEDIATELY ON SALE OR OVER TIME?
13 A. THE \$900,000 FIRST IS PAID IMMEDIATELY.
14 Q. OKAY, AND DID NORCAL PAY THAT MONEY?
15 A. YES.
16 Q. AT THE TIME IT WAS SUPPOSED TO BE PAID?
17 A. YES.
18 Q. WHAT ABOUT THE DEBTS, DID THEY ASSUME THE DEBTS?
19 A. YES.
20 Q. SO YOU NEVER WENT TO A LAWYER TO SETTLE A DISPUTE
21 WITH NORCAL OVER THE SALE OF KOGIDO?
22 A. NO. WE WENT TO THE ATTORNEY FOR THAT BECAUSE --
23 Q. JUST A MINUTE. DID YOU SEE A LAWYER ABOUT THAT?
24 A. YES.
25 Q. AND IF THEY PAID EVERYTHING THEY WERE SUPPOSED TO PAY
26 ON TIME, WHY DID YOU GO SEE A LAWYER?
27 A. LET ME CLARIFY. THEY PAY EVERYTHING BECAUSE THERE'S
28 TWO DIFFERENT PAYMENTS. ONE IS ADVANCE, ONE IS INSTALLMENT.

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1 WHEN I SAY THEY PAY AROUND \$800,000 IT'S CASH UP FRONT SO WE
2 CAN PAY OUT DEBTS. THE PEOPLE WE -- AND AROUND A MILLION
3 DOLLARS THEY PAY IN INSTALLMENTS IN A FEW YEARS. THEY PAY THE
4 INSTALLMENT IN A FEW YEARS.

- 5 Q. DID THEY PAY ALL THE INSTALLMENTS ON TIME?
6 A. NO.
7 Q. DID THEY PAY THE FIRST INSTALLMENT ON TIME?
8 A. NO.
9 Q. DID THEY GIVE ANY REASON WHY THEY DIDN' T PAY?
10 A. ALL THEY SAY IS THEY GUESS THE COMPANY HAD PROBLEM,
11 CASH PROBLEMS, AND THEY CAN' T MAKE THE PAYMENT.
12 Q. SO IS THAT WHY YOU SAW A LAWYER ABOUT THIS
13 TRANSACTION?
14 A. YES.
15 Q. AND HOW -- EVENTUALLY, DID YOU WORK OUT A SETTLEMENT
16 WITH NORCAL?
17 A. YES.
18 Q. DID YOU RECEIVE ADDITIONAL MONEY FROM NORCAL?
19 A. YES.
20 Q. HOW MUCH?
21 A. \$200,000 CASH, WITH ABOUT \$300,000 THAT WAS OLD
22 EQUIPMENT THAT WE SETTLED WITH THEM.
23 Q. \$300,000 WORTH OF WHAT?
24 A. OLD EQUIPMENT.
25 Q. SO YOU GOT SOME MONEY AND SOME EQUIPMENT?
26 A. YES.
27 Q. THAT WAS AFTER YOU SAW A LAWYER AND REACHED A
28 SETTLEMENT?

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- 1 A. YES.
2 Q. DID YOU HAVE TO REDUCE THE PRICE OF THE SALE IN ORDER

- 3 TO ACHIEVE A SETTLEMENT, OR DID YOU GET THE FULL AMOUNT?
- 4 A. WE HAVE TO REDUCE THE PRICE.
- 5 Q. HOW MUCH DID YOU REDUCE IT BY?
- 6 A. WE DO, THE VALUE OF THE EQUIPMENT IS ACTUALLY 300 AND
7 CASH IS 200. WE ACTUALLY REDUCED HALF OF THE DEBT THAT THEY
8 OWE TO US.
- 9 Q. AND WHEN NORCAL FIRST PURCHASED KOGIDO, DID YOU STAY
10 ON AS AN EMPLOYEE OF NORCAL?
- 11 A. YES.
- 12 Q. AND CONTINUED RUNNING THE BUSINESS FOR NORCAL?
- 13 A. YES.
- 14 Q. HOW LONG DID YOU STAY ON AS AN EMPLOYEE OF NORCAL?
- 15 A. ROUGHLY CLOSE TO A YEAR.
- 16 Q. THAT WOULD BE AROUND 1991 WHEN YOU STOPPED WORKING
17 FOR NORCAL?
- 18 A. YES.
- 19 Q. WHAT DID YOU DO NEXT?
- 20 A. WHEN I STOPPED WORKING FOR NORCAL, WE TEAM UP A JOINT
21 TEAM FOR OURSELVES AND START A COMPANY CALLED CALIFORNIA WASTE
22 SOLUTIONS.
- 23 Q. WHAT KIND OF BUSINESS IS CALIFORNIA WASTE SOLUTIONS?
- 24 A. RECYCLING AND WASTE MANAGEMENT.
- 25 Q. AND IS THAT A CORPORATION?
- 26 A. YES.
- 27 Q. AND WHO WERE THE SHAREHOLDERS OF CALIFORNIA WASTE
28 SOLUTIONS?

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- 1 A. CALIFORNIA WASTE SOLUTIONS, BESIDES MYSELF, MY WIFE,
2 MY BROTHER, I HAVE TWO BROTHERS, AND MY SISTER.
- 3 Q. SO THAT WOULD BE VICTOR AND LINDA AND WHO ELSE?
- 4 A. VICTOR, LINDA, CHRISTINA, AND WE ALSO HAVE CAPITAL
5 VENTURE COMPANY ALSO PUT IN MONEY.
- 6 Q. SO ONE OF THE SHAREHOLDERS OR PARTNERS IS A FUNDING
7 COMPANY?
- 8 A. YES.
- 9 Q. AND YOU STARTED CWS IN ABOUT 1992?
- 10 A. YES.
- 11 Q. WHEN YOU FIRST STARTED IT, WHERE WAS IT LOCATED?
- 12 A. OAKLAND.
- 13 Q. DO YOU REMEMBER THE ADDRESS?
- 14 A. YES. 1820 10TH STREET, OAKLAND, CALIFORNIA.
- 15 Q. SO WHEN YOU FIRST STARTED IN 1992 YOU HAD ONE
16 OPERATION IN OAKLAND AT 1820 10TH STREET, CORRECT?
- 17 A. YES.
- 18 Q. OTHER COMPANIES WOULD DELIVER RECYCLABLES TO YOUR
19 FACILITY IN OAKLAND AND YOU WOULD SORT THE RECYCLABLES AND
20 RESELL THEM, CORRECT?
- 21 A. YES.
- 22 Q. WHEN THEY DELIVERED THE RECYCLABLES TO YOUR FACILITY,
23 THEY WERE MIXED TOGETHER OR A SEPARATE STREAM?
- 24 A. WE HAVE TWO OPERATIONS. ONE IS WE, WHEN WE START
25 CALIFORNIA WASTE SOLUTIONS, WE HAVE BID OUT FOR THE CITY OF
26 OAKLAND FOR RECYCLING COLLECTION AND PROCESSING. AND WE WENT
27 TO BID FOR THAT AND WE GET THE AWARD FOR A QUARTER OF THE CITY
28 FOR COLLECTION AND PROCESSING. THAT'S ONE.

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1 WE WERE ALSO TAKING MATERIAL IN FROM, YOU KNOW,
2 DIFFERENT OTHER COMPANIES THAT PREPROCESSING FOR THEM AND
3 MARKET FOR THEM.

4 Q. YOU HAD A CONTRACT WITH THE CITY OF OAKLAND?

5 A. YES.

6 Q. FOR PART OF THE CONTRACT YOU PROCESSED THE RECYCLABLE
7 MATERIALS FROM A PORTION OF OAKLAND; IS THAT CORRECT?

8 A. YES.

9 Q. DID YOU ALSO HAVE TRUCKS TO GO OUT AND PICK UP THE
10 RECYCLABLES, OR DID YOU JUST RECEIVE THEM?

11 A. WE ALSO HAD TRUCKS GOING OUT TO COLLECT THEM.

12 Q. DOES CWS USE UNION LABOR?

13 A. YES.

14 Q. WHICH UNION?

15 A. LOCAL 6 ILWU.

16 Q. AND LOCAL 6 ILWU SOMETIMES IS REFERRED TO AS THE
17 LONGSHOREMEN?

18 A. YES.

19 Q. AND DO YOU USE DRIVERS TO PICK UP RECYCLABLES IN
20 OAKLAND AS WELL?

21 A. YES.

22 Q. WHAT UNION DO THE DRIVERS BELONG TO?

23 A. TEAMSTERS LOCAL 70.

24 Q. THAT WOULD BE DIFFERENT THAN TEAMSTERS LOCAL 350 DOWN
25 HERE IN SAN JOSE, CORRECT?

26 A. YES.

27 Q. IS IT CORRECT THAT MOST OF YOUR EMPLOYEES PROCESSING
28 THE RECYCLABLES ARE MEMBERS OF THE LONGSHOREMEN, CORRECT?

1 A. YES.

2 Q. A SMALL PORTION ARE DRIVERS AND MEMBERS OF TEAMSTER' S
3 LOCAL 70?

4 A. YES.

5 Q. AND HOW LONG HAVE YOU USED TEAMSTER WORKERS TO
6 PROCESS THE RECYCLABLES AT CWS, SINCE WHEN?

7 A. SINCE 2002.

8 Q. OKAY. AND I WANT TO ASK YOU ABOUT YOUR EXPERIENCE
9 WITH THAT UNION. HAVE YOU HAD ANY STRIKES BY THAT UNION, THE
10 LONGSHOREMEN?

11 A. YES.

12 Q. OKAY. HOW MANY STRIKES?

13 A. ONE I CAN REMEMBER.

14 Q. HOW LONG WAS THAT STRIKE?

15 A. ABOUT THREE WEEKS.

16 Q. THREE WEEKS, OKAY, AND WHAT WAS THE STRIKE OVER, A
17 WAGE DISPUTE OR SOMETHING ELSE?

18 A. YES.

19 Q. OKAY. AND WERE YOU ABLE TO SETTLE THE STRIKE
20 SATISFACTORILY TO BOTH SIDES?

21 A. YES.

22 Q. WHEN DID THAT HAPPEN?

23 A. 1988.

24 Q. OKAY. SO I'M A LITTLE CONFUSED BECAUSE I THOUGHT YOU
25 TOLD US THAT YOU STARTED USING THE LONGSHOREMEN IN 2002, AND
26 NOW YOU'RE TELLING US YOU HAD A STRIKE BY THEM IN 1988. DID I
27 GET THAT WRONG, OR DID YOU MISSTATE SOMETHING?

28 A. MAYBE I HEAR IT WRONG.

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1 Q. LET ME START AGAIN. WHEN DID CWS START OPERATING?

2 A. 1992.

3 Q. WHEN DID CWS START USING UNION LABOR?

4 A. 1998.

5 Q. 1998?

6 A. YES.

7 Q. WHEN DID YOU HAVE THIS STRIKE BY THE LONGSHOREMEN?

8 A. 1998.

9 Q. SO WAS THE STRIKE OVER ORGANIZING YOUR BUSINESS OR
10 WAS IT OVER THE TERMS OF THE COLLECTIVE BARGAINING AGREEMENT,
11 OR WHAT?

12 A. ORGANIZING THE UNION AND ALSO PROBABLY THE BENEFIT
13 AND --

14 Q. SO THIS WAS A STRIKE IN '98 WHEN YOU FIRST STARTED
15 USING THESE UNION LABORERS, CORRECT?

16 A. YES.

17 Q. SINCE THAT TIME, HAVE YOU HAD ANY STRIKES BY THE
18 LONGSHOREMEN?

19 A. I DON'T REMEMBER, IF ANY.

20 Q. WHEN YOU SAY YOU DON'T REMEMBER, DO YOU MEAN YOU
21 DON'T REMEMBER IT HAPPENING, OR IT COULD HAVE HAPPENED OR NOT
22 HAPPENED? WHAT WOULD YOU SAY?

23 A. THERE'S THE OTHER STRIKE. AFTER THE FIRST AGREEMENT
24 WITH LONGSHOREMEN, THEN WE GO INTO THE SECOND AGREEMENT.

25 THERE'S, I REMEMBER THERE'S PROBABLY ABOUT A COUPLE OF DAYS

26 STRIKE.

27 Q. SO THAT WAS NO BIG DEAL?

28 A. RIGHT.

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823

1 Q. WHO DID YOU DEAL WITH FROM THE LONGSHOREMEN LOCAL 6?

2 A. ROBERTO F-L-O-T-T-E.

3 Q. ROBERTO FLOTTE?

4 A. YES.

5 Q. HOW WOULD YOU CHARACTERIZE YOUR RELATIONSHIP WITH
6 LONGSHOREMEN' S, GOOD RELATIONSHIP, BAD RELATIONSHIP, HOW?

7 A. GOOD.

8 Q. GOOD RELATIONSHIP?

9 A. YES.

10 Q. SO DESPITE THIS STRIKE OR TWO THAT YOU TOLD US ABOUT,
11 YOU FELT YOU HAD A GOOD RELATIONSHIP WITH THEM, CORRECT?

12 A. YES.

13 Q. NOW, DOES CWS ALSO HAVE AN OPERATION IN SACRAMENTO?

14 A. NO.

15 Q. DID IT HAVE AN OPERATION IN SACRAMENTO?

16 A. NO. WE ONLY PROCESSING THE MATERIAL FOR SACRAMENTO.

17 Q. SO YOU WOULD -- YOU PROCESSED THAT IN OAKLAND?

18 A. YES.

19 Q. THAT WAS AT THE 1820 10TH ADDRESS, OR THE SECOND
20 FACILITY IN OAKLAND?

21 A. SECOND FACILITY IN OAKLAND.

22 Q. AND DID YOU USE UNION LABOR AT THE SECOND FACILITY?

23 A. YES.

- 24 Q. WHICH UNION?
25 A. LOCAL 6.
26 Q. THE LONGSHOREMEN?
27 A. YES.
28 Q. NOW, I WOULD LIKE TO MOVE OFF THIS BACKGROUND

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- 1 INFORMATION AND GET INTO WHAT THIS INVESTIGATION IS ALL ABOUT.
2 AT SOME POINT IN THE YEAR 2000, DID YOU LEARN THAT
3 THERE MIGHT BE A BUSINESS OPPORTUNITY FOR CWS IN THE CITY OF
4 SAN JOSE?
5 A. YES.
6 Q. HOW DID YOU LEARN ABOUT THAT?
7 A. BECAUSE THE CITY OF SAN JOSE ISSUE THE R. P. FOR
8 BIDDING.
9 Q. OKAY. AND HOW DID YOU LEARN ABOUT THE CITY ISSUES
10 AND RFP?
11 A. WE HAVE PERSON IN SAN JOSE NOTIFIED US AND TELL US
12 THE CITY IS GETTING READY TO GO OUT FOR BIDDING.
13 Q. WHEN YOU SAY YOU HAVE A PERSON IN SAN JOSE, IS THIS A
14 CONSULTANT YOU USE OR SOMEONE EMPLOYED BY THE CITY?
15 A. NO, THIS IS A PERSON THAT IS DOING BUSINESS AS A
16 CONSULTANT.
17 Q. WHAT IS THE NAME OF THIS PERSON?
18 A. BARBARA ZEITMAN-OLSEN.
19 Q. BARBARA ZEITMAN-OLSEN?
20 A. YES.
21 Q. IS THIS PERSON WHAT IS SOMETIMES CALLED A LOBBYIST?

22 A. YES.
23 Q. OR A GOVERNMENT AFFAIRS CONSULTANT?
24 A. YES.
25 Q. WHAT'S THE NAME OF BARBARA ZEITMAN-OLSEN'S BUSINESS?
26 A. IT'S CALLED ZEITMAN, ASSOCIATED.
27 Q. SO MISS BARBARA ZEITMAN-OLSEN APPROACHED YOU AND SAID
28 THAT SHE THOUGHT YOU MIGHT HAVE A BUSINESS OPPORTUNITY IN

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1 SAN JOSE?
2 A. YES.
3 Q. AND SHE TOLD YOU ABOUT THE RFP THAT THE CITY EITHER
4 WAS PROPOSING TO RELEASE OR HAD RELEASED; IS THAT CORRECT?
5 A. YES.
6 Q. WERE YOU THINKING THAT CWS MIGHT ACTUALLY SUBMIT A
7 PROPOSAL IN RESPONSE TO THE RFP?
8 A. YES.
9 Q. AND WHAT WERE YOU THINKING OF BIDDING ON, WHAT ASPECT
10 OF IT -- DID YOU LOOK AT THE RFP?
11 A. YES.
12 Q. AND DID YOU UNDERSTAND THAT THERE WERE THREE
13 DISTRICTS, A, B, AND C?
14 A. YES.
15 Q. IN EACH DISTRICT THERE WERE SEVERAL SERVICES THE CITY
16 WAS SEEKING?
17 A. YES, SIR.
18 Q. COLLECTION OF TRASH, CORRECT?
19 A. YES.

- 20 Q. COLLECTION OF RECYCLABLES?
21 A. YES.
22 Q. DISPOSAL OF RECYCLABLES BY SORTING THEM AND
23 REPROCESSING THEM, CORRECT?
24 A. YES.
25 Q. AND YARD TRIMMINGS, RIGHT?
26 A. YES.
27 Q. WHAT ASPECTS OF THAT RFP WERE YOU THINKING ABOUT
28 BIDDING ON?

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- 1 A. WE, I WORK WITH MY CONSULTANT AND WE LOOK AT ALL
2 SCENARIOS, WHAT WE THINK THAT WE CAN BID FOR, WHAT WE THINK WE
3 HAVE A GOOD CHANCE DO BID ON. WE LOOK AT THAT AND FIGURE OUT
4 A, B, AND C, THAT C IS THE SMALLEST PORTION OF THOSE THREE.
5 BECAUSE THIS IS COLLECT THE GARBAGE, GREEN WASTE, RECYCLABLES,
6 TIRES AND ALSO PROCESSING. SO WE LOOKING TO BID FOR THE
7 SECTOR C.
8 Q. DID YOU ACTUALLY PUT TOGETHER A PROPOSAL AND SUBMIT A
9 PROPOSAL TO THE CITY OF SAN JOSE FOR DISTRICT C?
10 A. WE PUT TOGETHER, BUT WE DIDN'T SUBMIT IT TO THE CITY.
11 Q. WHY NOT?
12 A. BECAUSE WE GET APPROACHED BY NORCAL TO JOIN WITH
13 THEM.
14 Q. SO NORCAL APPROACHED YOU WHILE YOU WERE WORKING ON
15 THIS PROPOSAL ABOUT JOINING THEM IN A PROPOSAL?
16 A. YES.
17 Q. WHO MADE THE CONTACT BETWEEN NORCAL AND YOU?

- 18 A. A PERSON THAT' S DOING CONSULTING WORK IN OAKLAND
19 CALLED LILY H-U.
- 20 Q. AND I TAKE IT YOU MET WITH SOMEONE AT NORCAL ABOUT
21 JOINING FORCES TO PUT A PROPOSAL IN TOGETHER?
- 22 A. YES.
- 23 Q. AND WHO DID YOU MEET WITH AT NORCAL?
- 24 A. WITH THE CEO, MIKE SANGIACOMO.
- 25 Q. OKAY.
- 26 A. AND THE COO OF THE COMPANY.
- 27 Q. IS THAT ARCHIE HUMPHREY?
- 28 A. YES.

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- 1 Q. DID YOU COME TO AN AGREEMENT WITH NORCAL AS TO WHAT
2 CWS' S PARTICIPATION WOULD BE IN THIS JOINT PROPOSAL?
- 3 A. YES.
- 4 Q. WHAT WAS THE AGREEMENT GENERALLY, YOUR UNDERSTANDING
5 OF THE AGREEMENT?
- 6 A. THE AGREEMENT IS ONE, THAT WE JOIN WITH NORCAL TO BID
7 FOR SAN JOSE MATERIAL, THAT WE WILL BUILD A PROCESSING
8 FACILITY TO PROCESS ALL, WHATEVER IT WILL WIN OR WHATEVER
9 MATERIAL THAT WE WILL PROCESS AND RECYCLE MATERIAL. AND
10 THAT' S ONE AGREEMENT.
- 11 THE SECOND AGREEMENT IS IF WE DON' T WIN ANYTHING,
12 NORCAL STILL IS GOING TO DELIVER US THE MATERIALS FROM THE
13 SEVEN CITIES IN SANTA CLARA COUNTY THAT NORCAL IS COLLECTING
14 IN SANTA CLARA COUNTY.
- 15 Q. SO AT THE TIME YOU HAD THIS DISCUSSION WITH NORCAL,

16 NORCAL ALREADY HAD CONTRACTS WITH SMALLER CITIES IN SANTA
17 CLARA COUNTY, CORRECT?

18 A. YES.

19 Q. AND THIS BID PROPOSAL WAS FOR THE CITY OF SAN JOSE,
20 ALSO IN SANTA CLARA COUNTY, CORRECT?

21 A. YES.

22 Q. SO YOUR AGREEMENT WITH NORCAL WAS YOU WOULD DO THE
23 SORTING OF THE RECYCLABLES IF NORCAL WON THE SAN JOSE
24 CONTRACT, CORRECT?

25 A. YES.

26 Q. AND IF THEY WON IT OR NOT, YOU WOULD STILL GET THE
27 RECYCLABLES COLLECTED BY NORCAL IN OTHER CITIES IN SANTA
28 CLARA?

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1 A. CORRECT.

2 Q. DID YOU HAVE ANY RELUCTANCE TO ENTER INTO THAT
3 AGREEMENT WITH NORCAL ON THIS BID PROPOSAL INITIALLY?

4 A. I DON'T UNDERSTAND. RELUCTANT?

5 Q. WHEN YOU WERE TALKING TO NORCAL ABOUT JOINING THEM IN
6 THIS PROPOSAL, WERE YOU CONCERNED THAT YOU MIGHT HAVE SOME
7 PROBLEMS WITH NORCAL BECAUSE OF THE PROBLEMS YOU HAD HAD
8 EARLIER WHEN NORCAL BOUGHT OUT KOGIDO?

9 A. THAT'S CORRECT.

10 Q. DID YOU RAISE THOSE CONCERNS WITH MR. SANGIACOMO?

11 A. YES.

12 Q. WAS HE ABLE TO CONVINCEN YOU THAT THAT WAS IN THE PAST
13 AND THAT THIS DEAL WOULD GO SMOOTHLY?

14 A. YES.

15 Q. I WILL ASK YOU TO TAKE A LOOK AT EXHIBIT 4 IN A
16 MOMENT. THIS IS A CERTIFIED COPY OF THE NORCAL PROPOSAL THAT
17 WE RECEIVED FROM THE CITY OF SAN JOSE. DOES THIS LOOK
18 FAMILIAR TO YOU?

19 A. YES.

20 Q. AND DID THE NORCAL PROPOSAL INCLUDE A WRITTEN
21 AGREEMENT BETWEEN CWS AND NORCAL FOR RECYCLABLE SERVICES?

22 A. YES.

23 Q. WHY DON'T YOU LOOK AT APPENDIX I OF EXHIBIT 4 AND SEE
24 IF YOU RECOGNIZE THAT DOCUMENT.

25 A. YES.

26 Q. WHAT IS APPENDIX I OF EXHIBIT 4?

27 A. IT'S A SUBCONTRACT FOR RECYCLABLE MATERIALS
28 PROCESSING.

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1 Q. IS THAT THE SUBCONTRACT BETWEEN CWS AND NORCAL?

2 A. YES.

3 Q. THAT YOU DESCRIBED TO US, GENERALLY JUST TOLD US
4 ABOUT?

5 A. YES.

6 Q. AND WHAT'S THE DATE OF THAT SUBCONTRACT?

7 A. JULY 11, 2000.

8 Q. IS THAT YOUR SIGNATURE ON THE SUBCONTRACT?

9 A. YES.

10 Q. AND DID YOU SIGN IT ON THAT DAY, JULY 11, 2000?

11 A. YES.

12 Q. AND AT THE TIME YOU ENTERED INTO THAT AGREEMENT WITH
13 NORCAL, DID CWS ALREADY HAVE A FACILITY IN SAN JOSE?

14 A. NO.

15 Q. SO WAS IT CONTEMPLATED THAT IF NORCAL WON THE
16 PROPOSAL, THE CONTRACT WITH THE CITY, CWS WOULD BUILD A
17 FACILITY IN SAN JOSE?

18 A. WHEN THE AGREEMENT GOING IN THAT THEY REQUIRE US THAT
19 WE HAVE TO FIND A FACILITY FOR THEM, THE FACILITY HAVE TO BE
20 IN SAN JOSE.

21 Q. RIGHT.

22 A. SO THEY CAN USE IT FOR THE BID.

23 Q. MY POINT IS YOU ACTUALLY DIDN'T HAVE A OPERATION IN
24 SAN JOSE IN JULY OF 2000, CORRECT?

25 A. THAT'S CORRECT.

26 Q. SO YOU WHAT YOU EXPECTED TO DO IS IF NORCAL WON THE
27 CONTRACT, YOU WOULD OPEN A OPERATION IN SAN JOSE, CORRECT?

28 A. YES.

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1 Q. AND THE CONTRACT DIDN'T REQUIRE YOU TO START
2 OPERATIONS UNTIL JULY 1 OF '02, CORRECT?

3 A. YES.

4 Q. THAT'S ABOUT TWO YEARS DOWN THE ROAD FROM JULY OF
5 2000, CORRECT?

6 A. YES.

7 Q. OKAY. NOW, DID YOU HAVE PLANS AS TO WHAT LABOR
8 SOURCE YOU WOULD USE IF YOU HAD TO START AN OPERATION IN
9 SAN JOSE UNDER THIS NORCAL PROPOSAL?

- 10 A. YES.
- 11 Q. WHAT WERE YOUR PLANS?
- 12 A. LONGSHOREMEN.
- 13 Q. WHAT WOULD BE ILWU LOCAL 6?
- 14 A. YES.
- 15 Q. AND DID YOU HAVE SOME KIND OF AGREEMENT WITH THE ILWU
16 LOCAL 6, THE LONGSHOREMEN, IN CONNECTION WITH YOUR OAKLAND
17 FACILITY THAT OBLIGATED CWS TO USE LONGSHOREMEN IF IT EXPANDED
18 ITS OPERATION INTO SAN JOSE?
- 19 A. (NO RESPONSE.)
- 20 Q. THAT'S A LONG QUESTION. LET ME WITHDRAW THAT.
21 DID YOU HAVE AN AGREEMENT WITH THE LONGSHOREMEN
22 ABOUT USING THE LONGSHOREMEN IF AND WHEN YOU EXPANDED CWS'S
23 OPERATION TO SAN JOSE?
- 24 A. YES.
- 25 Q. OKAY. LET ME HAVE YOU TAKE A LOOK AT EXHIBIT 9.
26 HAVE YOU SEEN EXHIBIT 9 BEFORE?
- 27 A. YES.
- 28 Q. AND IS THIS A LETTER THAT YOU SENT TO MAYOR GONZALES

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- 1 ON OCTOBER 4, 2000?
- 2 A. YES.
- 3 Q. AND DO YOU RECALL HOW IT WAS DELIVERED TO THE MAYOR
4 GONZALES, WAS IT MAILED, DELIVERED IN PERSON, SENT BY FAX?
- 5 A. I DON'T REMEMBER.
- 6 Q. LET ME ASK YOU ABOUT A STATEMENT IN THIS LETTER.
7 LOOK AT THE LAST -- FIRST OF ALL, THAT'S YOUR SIGNATURE,

8 CORRECT?
9 A. YES.
10 Q. AND IF YOU LOOK AT THE LAST PARAGRAPH IN THIS LETTER,
11 YOU SAY, THE ILWU IS PROMINENT IN OUR INDUSTRY IN THE EAST
12 BAY; IS THAT TRUE?
13 A. YES.
14 Q. REPRESENTING THE MATERIALS PROCESSORS AND SEVERAL OF
15 THE LARGER OR MEDIUM-SIZED GARBAGE COMPANIES AND MAJOR RECYCLE
16 COMPANIES; IS THAT TRUE?
17 A. YES.
18 Q. AND THEN YOU SAY, OUR COMMITMENT TO LOCAL 6 AT THE
19 TIME OF THE ORGANIZATION OF OUR WORKERS WAS THE LOGICAL AND
20 APPROPRIATE THING TO DO; IS THAT RIGHT?
21 A. YES.
22 Q. AND YOU TELL THE MAYOR THAT, IN THE PARAGRAPH ABOVE
23 IT, THAT YOU'RE GOING TO OFFER WORK TO ANY DISPLACED WORKERS
24 IN THE EVENT THAT NORCAL GETS THE CONTRACT UNDER YOUR ILWU
25 CONTRACT, CORRECT?
26 A. YES.
27 Q. AND IN THE FIRST PARAGRAPH YOU SAY THAT YOU HAVE
28 COMMITTED TO LOCAL 6 THAT ANY BAY AREA EXPANSIONS OF YOUR

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1 RECYCLABLE PROCESSING BUSINESS WILL INCLUDE THEIR UNION,
2 CORRECT?
3 A. YES.
4 Q. WAS THAT TRUE?
5 A. YES.

- 6 Q. NOW, DO YOU REMEMBER WHO PREPARED THIS LETTER FOR
7 YOUR SIGNATURE?
- 8 A. I ' M NOT SURE WHO.
- 9 Q. OKAY, DO YOU REMEMBER WHY YOU SIGNED THIS LETTER TO
10 MAYOR GONZALES?
- 11 A. YES.
- 12 Q. AND DID YOU SIGN IT ON OR ABOUT OCTOBER 4, 2000?
- 13 A. YES.
- 14 Q. AND DO YOU RECALL THAT OCTOBER 4, 2000 WAS ONLY A FEW
15 DAYS BEFORE THE FIRST CITY COUNCIL VOTE ON THE NORCAL
16 CONTRACT?
- 17 A. YES.
- 18 Q. JUST TO ORIENT YOU, WE' VE HEARD LOTS OF EVIDENCE THAT
19 THE FIRST VOTE ON THE RFP WAS ON TUESDAY, OCTOBER 10, 2000.
20 DO YOU RECALL THAT?
- 21 A. I DON' T REMEMBER THE EXACT DATE.
- 22 Q. I WOULD LIKE YOU TO ASSUME THAT THE FIRST VOTE WAS ON
23 TUESDAY, OCTOBER 10, 2000.
- 24 A. OKAY.
- 25 Q. SO THIS WOULD BE, AND IF THIS LETTER WENT OUT ON
26 OCTOBER 4, THAT WOULD BE SIX DAYS EARLIER, OR THE WEDNESDAY
27 BEFORE THE TUESDAY COUNCIL VOTE, RIGHT?
- 28 A. YES.

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- 1 Q. WHY DID YOU SEND THIS LETTER TO MAYOR GONZALES ON
2 OCTOBER 4, 2000?
- 3 A. WELL, BECAUSE THIS LETTER WENT OUT BECAUSE NORCAL

4 INFORMED US THAT THE CITY HAVE CONCERN ABOUT UNION, USING
5 UNION IN SAN JOSE AND PAYING FAIR WAGE, SO WE SENT IT OUT TO
6 ASSURE THAT WE ARE UNION COMPANY AND WE' RE ASSURING ABOUT IF
7 WORKERS GET DI S PLACED.

8 Q. THE UNION YOU' RE REFERRING TO IN YOUR LETTER IS THE
9 LONGSHOREMEN' S UNION?

10 A. THAT' S CORRECT.

11 Q. I NOTICED THERE IS A FAX HEADER AT THE TOP OF THIS
12 DOCUMENT THAT READS OCTOBER 4, 2000, 2: 37 P. M. , LOS ALTOS
13 GARBAGE. DO YOU KNOW WHO THAT REFERS TO?

14 A. YES. THAT' S TO BILL JONES, WHO IS THE HEAD PERSON
15 FOR NORCAL IN SAN JOSE.

16 Q. HE' S THE GROUP MANAGER?

17 A. YES.

18 Q. SO DID HE FAX THIS LETTER TO YOU, OR DID YOU FAX IT
19 TO HIM?

20 A. BASED ON THIS, I THINK I FAXED IT TO HIM.

21 Q. YOU FAXED IT TO HIM?

22 A. YES.

23 Q. WHY WOULD HIS FAX HEADER BE AT THE TOP OF THE
24 DOCUMENT?

25 A. (NO RESPONSE.)

26 Q. WHILE YOU' RE THINKING ABOUT THAT, THERE' S ANOTHER FAX
27 HEADER. DO YOU SEE THE FAX HEADER AT THE BOTTOM OF THE
28 DOCUMENT THAT' S UPSIDE DOWN?

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1 A. YES.

2 Q. WHAT DOES THAT REFER TO, THAT'S OCTOBER 4, 2000,
3 WEDNESDAY AT 1450 HOURS; DO YOU SEE THAT?
4 A. YES.
5 Q. THERE'S A FAX NUMBER, 510-832 -- LOOKS LIKE 3826?
6 A. YES.
7 Q. IT SAYS DAVID T. DUONG'S DESK. DO YOU SEE THAT?
8 A. YES.
9 Q. SO 1450 IS MILITARY TIME FOR 50 MINUTES AFTER 2:00
10 O'CLOCK, CORRECT?
11 A. YES.
12 Q. BUT THE FIRST FAX HEADER ON THE TOP OF THE DOCUMENT
13 IS EARLIER, IT'S AT 2:37, OR 14:37 HOURS, RIGHT?
14 A. YES.
15 Q. LOOKING AT THOSE TWO FAX HEADERS, IF YOU REMEMBER,
16 CAN YOU TELL US THE SEQUENCE OF EVENTS HERE REGARDING THAT
17 LETTER? IF YOU DON'T REMEMBER, THAT'S OKAY TOO.
18 A. NO, I DON'T.
19 Q. WOULD YOU THINK ABOUT THAT AND LET US KNOW IF
20 SOMETHING JOGS YOUR MEMORY?
21 A. YES.
22 Q. I'M SORRY?
23 A. IF I REMEMBER?
24 Q. IF YOU SUDDENLY REMEMBER, WILL YOU LET US KNOW THAT?
25 A. YES.
26 Q. NOW, LET ME HAVE YOU TAKE A LOOK AT EXHIBIT 8. HAVE
27 YOU SEEN EXHIBIT 8 BEFORE?
28 A. YES.

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1 Q. AT THE BOTTOM OF THE LETTER IT REFLECTS THAT YOU ARE
2 COPIED ON THIS LETTER, CORRECT?

3 A. YES.

4 Q. WERE YOU IN FACT GIVEN A COPY OF THIS LETTER AT THE
5 TIME THE LETTER WENT OUT?

6 A. I DON'T REMEMBER, BUT I REMEMBER SEEING THIS LETTER.

7 Q. OKAY. SO AROUND THE TIME THAT THIS LETTER WENT OUT,
8 ALSO OCTOBER 4, 2000, YOU BELIEVED YOU SAW A COPY OF THIS
9 LETTER, CORRECT?

10 A. YES.

11 Q. LET ME ASK YOU ABOUT SOMETHING IN THE LETTER. FIRST
12 OF ALL, THE LETTER IS FROM ROBERTO FLOTTE, F-L-O-T-T-E?

13 A. YES.

14 Q. THAT'S THE PERSON YOU MENTIONED EARLIER THAT YOU
15 DEALT WITH IN CONNECTION WITH ILWU LOCAL 6, RIGHT?

16 A. YES.

17 Q. OR WHAT WE CALL THE LONGSHOREMEN, RIGHT?

18 A. YES.

19 Q. NOW, IN THIS LETTER -- WHICH ALSO WENT TO MAYOR
20 GONZALES APPARENTLY, CORRECT?

21 A. YES.

22 Q. IN THIS LETTER, THERE IS A PARAGRAPH THAT SAYS, IN
23 ADDITION, INCLUDED IN THE COLLECTIVE BARGAINING AGREEMENT WITH
24 CALIFORNIA WASTE SOLUTIONS IS A LETTER THAT STATES, QUOTE, "IF
25 CALIFORNIA WASTE SOLUTIONS OPENS A NEW FACILITY WITHIN THE
26 JURISDICTION OF LEGAL 6 WHICH IS FROM CHEEK TO FRESNO
27 CALIFORNIA THE EMPLOYEES AFFECTED WILL BE COVERED BY THE LOCAL
28 6 BARGAINING AGREEMENT." DO YOU SEE THAT?

1 A. YES.

2 Q. IS THAT A TRUE STATEMENT, DID YOU HAVE A LETTER
3 AGREEMENT WITH THE LONGSHOREMEN THAT SAID THAT?

4 A. I KNOW THERE' S A COMMITMENT AND AGREEMENT.

5 Q. A COMMITMENT AND AGREEMENT THAT WOULD REQUIRE CWS TO
6 USE LONGSHOREMEN IF THEY EXPAND THE OPERATION TO SAN JOSE?

7 A. YES. BUT THERE' S A LETTER AND AGREEMENT, I CAN' T
8 RECALL BECAUSE WE HAVE DEALT WITH THEM SO MANY TIMES IN SO
9 MANY YEARS AND I HAVEN' T SEEN THE CONTRACT SINCE WE SIGNED IT,
10 SO IF THERE' S A LETTER THERE MUST BE A LETTER.

11 Q. YOU DON' T DISPUTE WHAT MR. FLOTTE SAYS HERE ABOUT
12 THIS LETTER AGREEMENT?

13 A. CORRECT.

14 Q. AND YOU BELIEVE THAT THERE WAS SUCH AN AGREEMENT,
15 CORRECT?

16 A. YES.

17 Q. BUT YOU' RE NOT SURE WHETHER IT WAS A LETTER OR
18 CONTRACT OR WHERE IT IS, IS THAT FAIR?

19 A. YES.

20 Q. BUT THERE' S NO DOUBT THAT THERE WAS AN AGREEMENT IN
21 PLACE?

22 A. YES.

23 Q. NOW, APPARENTLY, AT LEAST AS OF THAT WEDNESDAY,
24 OCTOBER 4, 2000, CWS' S POSITION WAS THAT IF IT STARTED AN
25 OPERATION IN SAN JOSE IT WOULD BE USING LONGSHOREMEN, CORRECT?

26 A. YES.

27 Q. NOW, PRIOR TO THE CITY COUNCIL VOTE THE FOLLOWING
28 TUESDAY, OCTOBER 10, THE CITY STAFF AND PARTICULARLY THE

1 ENVIRONMENTAL SERVICES DEPARTMENT CAME OUT WITH A
2 RECOMMENDATION TO THE CITY COUNCIL ABOUT WHICH PROPOSALS THE
3 COUNCIL SHOULD PICK, RIGHT?

4 A. YES.

5 Q. AND ONE OF THE RECOMMENDATIONS WAS THAT THE COUNCIL
6 SHOULD AWARD THAT CONTRACT TO NORCAL, CORRECT?

7 A. YES.

8 Q. HOW DID YOU FIRST LEARN ABOUT THAT STAFF
9 RECOMMENDATION?

10 A. FROM NORCAL.

11 Q. WAS THAT BEFORE THIS LETTER WENT OUT?

12 A. NO.

13 Q. WAS IT BEFORE THE FIRST COUNCIL VOTE?

14 A. YES, I REMEMBER. BEFORE THE COUNCIL VOTE WE HEARD
15 FROM NORCAL THAT THEY RECOMMEND.

16 Q. I TAKE IT YOU WERE NOT UNHAPPY TO HEAR THAT NEWS?

17 A. THE THING IS, NORCAL DIDN'T WANT TO DEAL WITH CWS.
18 THEY KEEP US OUTSIDE. WHATEVER THEY TELL US, ALL WE KNOW IS
19 IF THEY TELL US.

20 Q. WHEN THEY SHARED WITH YOU THE NEWS THE STAFF IS
21 RECOMMENDING THAT THE CITY ACCEPT THE NORCAL PROPOSAL, YOU
22 WERE HAPPY TO HEAR THAT, RIGHT?

23 A. YES.

24 Q. THAT MEANT YOU WOULD BE GOING FORWARD ON YOUR
25 BUSINESS DEAL WITH NORCAL, RIGHT?

26 A. THAT'S RIGHT.

27 Q. OKAY. SO HERE WE ARE ON WEDNESDAY BEFORE THE COUNCIL

28 VOTE ON TUESDAY, OCTOBER 10. DID YOU MEET WITH THE MAYOR OF

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1 SAN JOSE ON THE FRIDAY BEFORE THE COUNCIL VOTE?

2 A. NO.

3 Q. DID YOU GO DOWN TO CITY HALL THAT FRIDAY?

4 A. NO.

5 Q. BY THE WAY, I WANT TO COME BACK TO THIS LETTER,
6 EXHIBIT 8. DID YOU ASK MR. FLOTTE TO PREPARE THIS LETTER FOR
7 TRANSMITTAL TO THE MAYOR?

8 A. I DON'T RECALL IF I OR MY CONSULTANT DID THAT.

9 Q. YOU OR WHO?

10 A. OR MY CONSULTANT WHO WAS WORKING ON THIS.

11 Q. BY YOUR CONSULTANT, YOU MEANT BARBARA ZEITMAN-OLSEN?

12 A. NO. WHAT I MEAN IS MY CONSULTANT, ALSO MY STAFF,
13 EITHER MY SISTER OR MY CONSULTANT PAUL ROTTENBERG,
14 R-O-T-T-E-N-B-E-R-G.

15 Q. WHO IS PAUL ROTTENBERG?

16 A. HE'S A LONG-TIME CONSULTANT FOR NEW BUSINESS
17 DEVELOPMENT.

18 Q. HE'S A LONG-TIME CONSULTANT FOR NEW BUSINESS
19 DEVELOPMENT?

20 A. YES.

21 Q. SO WE'VE HEARD SOME TESTIMONY THAT MIKE SANGIACOMO
22 MET WITH MAYOR GONZALES ON FRIDAY, OCTOBER 6, 2000. YOUR
23 RECOLLECTION IS YOU WEREN'T AT THAT MEETING?

24 A. CORRECT. I DON'T RECALL IF I WAS IN THAT, I DON'T
25 REMEMBER IF I WAS IN THAT MEETING.

26 Q. BEFORE THE FIRST CITY COUNCIL VOTE ON TUESDAY,
27 OCTOBER 10, DID YOU EVER INTRODUCE YOURSELF TO MAYOR GONZALES?

28 A. I MET WITH THE MAYOR ONCE, BUT I DON'T RECALL BEFORE

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1 THE VOTE OR AFTER THE VOTE. BUT THE MEETING, IT JUST, NORCAL
2 ASK US TO BE THERE TO INTRODUCE TO THE MAYOR, SAYING THIS IS
3 OUR SUBCONTRACTOR, AND THAT'S IT.

4 Q. LET ME ASK YOU, SAN JOSE HAS A LARGE VIETNAMESE
5 POPULATION, DOES IT NOT?

6 A. YES.

7 Q. DID YOU THINK THAT HAVING A VIETNAMESE-OWNED BUSINESS
8 WOULD BE HELPFUL IN GETTING A CONTRACT FROM THE CITY OF SAN
9 JOSE?

10 A. THAT'S WHY THEY PROPOSE, WHEN NORCAL PROPOSED US TO
11 GO INTO THE PARTNERSHIP, THAT'S WHAT THEY SUGGESTED.

12 Q. YOU HAD A MEETING WITH THE MAYOR OF SAN JOSE; THAT
13 WOULD BE MAYOR GONZALES, CORRECT?

14 A. YES.

15 Q. AND THAT WAS AT THE REQUEST OF NORCAL?

16 A. YES.

17 Q. SPECIFICALLY WAS THAT MIKE SANGIACOMO OR BILL JONES?

18 A. SANGIACOMO.

19 Q. AND WHAT IS YOUR BEST RECOLLECTION OF WHEN THAT
20 MEETING TOOK PLACE?

21 A. (NO RESPONSE.)

22 Q. YOU SEEM TO BE HAVING TROUBLE REMEMBERING. LET ME
23 WITHDRAW THAT QUESTION FOR A MOMENT AND POSE A FEW MORE

24 QUESTIONS.

25 ONE OF THE REASONS NORCAL SUGGESTED TO YOU THIS
26 COULD BE A GOOD RELATIONSHIP IF YOU, CWS, WENT IN WITH NORCAL
27 WAS BECAUSE YOU WERE A VIETNAMESE-OWNED BUSINESS, RIGHT?

28 A. YES.

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1 Q. AND SO IT WOULD SEEM TO MAKE SENSE THAT YOU WOULD
2 WANT TO SHAKE HANDS WITH THE MAYOR AND EXPLAIN TO HIM THAT
3 THIS IS A FAMILY-OWNED VIETNAMESE BUSINESS AND THAT YOU WOULD
4 WANT TO DO THAT BEFORE THE FIRST VOTE, RIGHT, NOT AFTER THE
5 VOTE?

6 A. THAT IS WHAT I THINKING IN MY MIND BECAUSE I KNOW
7 HERE I HAVE TO TELL THE TRUTH. THAT'S WHY I'M TRYING TO
8 REMEMBER EVERYTHING.

9 Q. OKAY.

10 A. LOGICALLY IT SHOULD BE BEFORE THE VOTE, BUT I
11 REMEMBER IT IN THE INTRODUCTION TO THE MAYOR THAT NORCAL SAY,
12 THIS IS DAVID DUONG, WHO IS THE OWNER OF CALIFORNIA WASTE
13 SOLUTIONS, WHO IS OUR SUBCONTRACTOR WHO DO THE WORK IN
14 SAN JOSE. SO I REMEMBER THE INTRODUCTION, SO I DON'T KNOW IF
15 THAT IS AFTER WE GET A CONTRACT OR BEFORE. BUT, YOU KNOW, IT
16 SHOULD BE BEFORE.

17 Q. BUT YOU DON'T REMEMBER?

18 A. THAT'S CORRECT.

19 Q. LET ME SEE IF I CAN HELP YOUR MEMORY A LITTLE BIT.
20 YOU REMEMBER THAT RIGHT BEFORE THE COUNCIL VOTE ON MONDAY,
21 OCTOBER 9, THERE WAS AN ADDENDUM TO YOUR SUBCONTRACT WITH

- 22 NORCAL?
- 23 A. YES.
- 24 Q. AND DO YOU REMEMBER THAT WAS THE DAY BEFORE THE FIRST
- 25 COUNCIL VOTE, RIGHT?
- 26 A. YES.
- 27 Q. SO THAT WAS MONDAY, OCTOBER 9, CORRECT?
- 28 A. YES.

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- 1 Q. THE FIRST COUNCIL VOTE WAS TUESDAY, OCTOBER 10,
- 2 RIGHT?
- 3 A. YES.
- 4 Q. YOUR LETTER WAS THE WEDNESDAY BEFORE, OCTOBER 4,
- 5 2000, RIGHT?
- 6 A. YES.
- 7 Q. SO NOW, HAVING THOSE DATES IN MIND, DOES THAT IN ANY
- 8 WAY REFRESH YOUR RECOLLECTION OF WHEN YOU MET WITH MAYOR
- 9 GONZALES?
- 10 A. (NO RESPONSE.)
- 11 Q. WAS IT BEFORE THE ADDENDUM?
- 12 A. (NO RESPONSE.) I STILL DON'T REMEMBER.
- 13 Q. OKAY. YOU DO REMEMBER THE EVENT, THOUGH, RIGHT?
- 14 A. YES.
- 15 Q. WAS THAT THE ONLY TIME THAT YOU HAD A FACE-TO-FACE
- 16 MEETING WITH MAYOR GONZALES?
- 17 A. IN THAT TIME LINE?
- 18 Q. YES, IN THAT TIME FRAME OF BEFORE YOU ENTERED INTO
- 19 THIS SUBCONTRACT AGREEMENT WITH NORCAL IN JULY OF 2000, HAD

20 YOU EVER MET MAYOR GONZALES IN PERSON?
21 A. BEFORE -- YES.
22 Q. YOU HAD?
23 A. YES.
24 Q. WHAT WAS THE OCCASION?
25 A. THAT' S, I REMEMBER ONE TIME BEFORE, THAT WOULD BE BID
26 GO OUT I ACTUALLY GET A CHANCE TO MEET WITH HIM IN HIS HOME,
27 YOU KNOW, HIS FRIEND --
28 Q. WHAT WAS THE OCCASION?

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1 A. IT' S SOME FUNDRAISING GOING ON.
2 Q. FOR THE MAYOR?
3 A. YES.
4 Q. DID YOU MAKE A CONTRIBUTION?
5 A. YES.
6 Q. I ASSUME THAT WAS BY CHECK?
7 A. YES.
8 Q. SO PRESUMABLY WE COULD LOOK UP THE CHECK AND HAVE
9 SOME IDEA OF THE DATE OF THAT MEETING?
10 A. I GUESS SO, YES.
11 Q. BUT AT THE TIME YOU HAD THAT FIRST MEETING, WAS THAT
12 YOUR FIRST MEETING WITH THE MAYOR?
13 A. IT' S NOT A MEETING, WE MET.
14 Q. FIRST TIME YOU MET THE MAYOR IN PERSON?
15 A. YES.
16 Q. THAT WAS IN 2000?
17 A. I DON' T REMEMBER WHAT YEAR.

- 18 Q. WAS HE RUNNING FOR OFFICE AT THE TIME?
19 A. YES, HE STARTED RUNNING.
20 Q. WAS THAT HIS FIRST TIME THAT HE WAS RUNNING FOR
21 MAYOR?
22 A. YES.
23 Q. SO THAT WOULD HAVE BEEN IN '98?
24 A. YES.
25 Q. SO THAT WAS 1998?
26 A. YES, I REMEMBER THE FIRST ONE.
27 Q. WHEN WAS THE NEXT TIME THAT YOU MET MAYOR GONZALES?
28 A. UNTIL NORCAL ASKED US TO GO SEE THE MAYOR.

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- 1 Q. THAT WOULD HAVE BEEN IN 2000 SOMETIME?
2 A. YES.
3 Q. YOU CAN'T REMEMBER WHETHER THAT WAS BEFORE OR AFTER
4 THE FIRST COUNCIL VOTE?
5 A. I CAN'T.
6 Q. DID ANYTHING HAPPEN WHILE YOU WERE WITH THE MAYOR
7 OTHER THAN, HI, HOW ARE YOU DOING, SHAKE HANDS, LEAVE?
8 A. YES. THAT'S ONLY THE MEETING, NORCAL MUST HAVE SOME
9 MEETING WITH THE MAYOR, BUT THEY ASKED US TO BE THERE AND, YOU
10 KNOW, WE ASKED TO COME IN AND JUST --
11 Q. WHERE DID THIS TAKE PLACE, WAS IT AT CITY HALL?
12 A. YES.
13 Q. THE OLD CITY HALL?
14 A. YES, AT THE MAYOR'S OFFICE.
15 Q. WAS IT IN A CONFERENCE ROOM OR IN THE MAYOR'S OFFICE?

- 16 A. AT THE MAYOR' S OFFICE, BECAUSE HE SIT BEHIND HIS
17 DESK.
18 Q. OKAY. AND WAS MI KE SANGI ACOMO THERE?
19 A. YES.
20 Q. WAS BILL JONES THERE?
21 A. YES.
22 Q. WHO ELSE WAS THERE?
23 A. THAT' S THE ONLY TWO PEOPLE I REMEMBER.
24 Q. OKAY. I TAKE IT THE MAYOR WAS THERE?
25 A. YES.
26 Q. ANYONE ELSE OTHER THAN THE MAYOR EMPLOYED BY THE CITY
27 THERE?
28 A. IN THAT MEETING, IN THAT ROOM I THINK ONLY THE MAYOR

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- 1 HE STAY HIMSELF.
2 Q. DO YOU KNOW JOE GUERRA?
3 A. YES.
4 Q. WAS HE THERE?
5 A. NOT AT THAT TIME.
6 Q. WHAT TIME OF DAY WAS THIS?
7 A. I REMEMBER IT' S IN THE MORNING.
8 Q. IN THE MORNING?
9 A. YES.
10 Q. WAS, DO YOU KNOW SOMEONE NAMED BOB MORALES?
11 A. YES.
12 Q. WAS HE THERE?
13 A. NO.

- 14 Q. DO YOU KNOW AMY DEAN?
15 A. YES.
16 Q. WAS SHE THERE?
17 A. NO.
18 Q. SO YOU SHOOK -- DID YOU SHAKE HANDS WITH THE MAYOR AT
19 THAT TIME?
20 A. YES.
21 Q. SO WHEN YOU SHOOK HANDS WITH THE MAYOR, THE ONLY
22 PEOPLE YOU REMEMBER BEING THERE WAS MAYOR GONZALES, MIKE
23 SANGIACOMO AND BILL JONES AND YOURSELF, RIGHT?
24 A. YES.
25 Q. YOU DON'T REMEMBER ANYONE ELSE BEING THERE, RIGHT?
26 A. I DON'T.
27 Q. AND YOU BELIEVE THIS TOOK PLACE IN THE MAYOR'S
28 OFFICE?

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- 1 A. YES.
2 Q. HOW LONG DID YOU STAY WITH THE MAYOR?
3 A. NOT TOO LONG, JUST THE INTRODUCTION NORCAL WANTED SO
4 THE MAYOR KNOW, YOU KNOW, THEY WANT EACH OF YOU KNOW THIS IS
5 VIETNAMESE SMALL BUSINESS, YOU KNOW.
6 Q. SO DID YOU DRIVE DOWN TO CITY HALL BY YOURSELF?
7 A. YES.
8 Q. WHEN YOU GOT TO THE MAYOR'S OFFICE, WERE MIKE
9 SANGIACOMO AND BILL JONES ALREADY IN THE MAYOR'S OFFICE, OR
10 WERE THEY IN SOME KIND OF WAITING ROOM?
11 A. I DO NOT REMEMBER.

12 Q. DID YOU GO INTO THE MAYOR'S OFFICE WITH MIKE
13 SANGIACOMO AND BILL JONES, OR DID YOU GO IN BY YOURSELF AND
14 THEY WERE ALREADY INSIDE, OR DID THEY JOIN YOU LATER?

15 A. WHEN I COME TO THE OFFICE, I KNOW THAT I'M IN THERE
16 WITH THEM. BUT IF THEY IN THERE BEFORE ME, WHEN I GET THERE I
17 JUST WALK IN, I DON'T REMEMBER. BUT ACTUALLY WHEN I'M IN THE
18 ROOM, I'M IN THE ROOM WITH THEM.

19 Q. SO AFTER YOU SHOOK HANDS WITH THE MAYOR, DID YOU THEN
20 WALK OUT?

21 A. YES.

22 Q. AND WHO STAYED BEHIND?

23 A. (NO RESPONSE.)

24 Q. DID THE MAYOR STAY BEHIND IN HIS OFFICE?

25 A. YES, HE STAYED BEHIND.

26 Q. WHAT ABOUT MIKE SANGIACOMO, DID HE WALK OUT WITH YOU
27 OR STAY BEHIND?

28 A. I THINK HE STAY BEHIND.

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1 Q. WHAT ABOUT BILL JONES, DID HE WALK OUT WITH YOU OR
2 STAY BEHIND?

3 A. I DON'T RECALL, BUT I HAVE A MEMORY LIKE THEM
4 ACTUALLY TAKING ME OUT.

5 Q. WHO IS TAKING YOU OUT?

6 A. BILL JONES -- THEY TAKE ME OUTSIDE, SO WHEN HE LEFT
7 SANGIACOMO TAKE ME.

8 Q. DO YOU KNOW WHETHER BILL JONES WENT BACK INTO THE
9 MAYOR'S OFFICE?

10 A. NO. I JUST WENT OUT MYSELF.
11 Q. WHAT DID YOU DO WHEN YOU LEFT THE MAYOR' S OFFICE,
12 WHERE DID YOU GO?
13 A. GO BACK TO MY OAKLAND OFFICE.
14 Q. SO YOU DIDN' T HANG AROUND TO TALK TO MIKE SANGI ACOMO
15 TO FIND OUT WHAT HE AND THE MAYOR TALKED ABOUT?
16 A. NO.
17 Q. YOU WEREN' T CURI OUS?
18 A. NO, BECAUSE NORCAL DID NOT LET US KNOW ANYTHING.
19 JUST LIKE AT THE MEETING, THEY CALLED TO SAY WE WANT YOU TO DO
20 THAT SO WE CAN INTRODUCE YOU TO THE MAYOR.
21 Q. WHO FROM NORCAL ASKED YOU TO COME DOWN AND SHAKE
22 HANDS WITH MAYOR?
23 A. MI KE SANGI ACOMO.
24 Q. DID HE TELL YOU WHY HE WANTED YOU COME DOWN ON THAT
25 DAY TO SHAKE HANDS WITH THE MAYOR?
26 A. YES. HE SAID THAT IT WOULD BE GOOD I F, WE WANT YOU
27 DOWN THERE SO WE CAN INTRODUCE YOU TO THE MAYOR SO THE MAYOR
28 KNOW WHO YOU ARE AND WHAT YOU DO, AND ESPECI ALLY THAT YOU ARE

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1 VIETNAMESE AND ALL THAT.
2 Q. WHY WAS IT REALLY GOOD FOR THE MAYOR TO KNOW WHO YOU
3 WERE AND THAT YOU WERE VI ETNAMESE?
4 A. THE WAY THAT NORCAL SAID THIS, IT WOULD BE HELPFUL
5 BECAUSE YOU ARE VI ETNAMESE, WHI CH SAN JOSE I S BI G VI ETNAMESE
6 POPULATI ON, SMALL MI NORI TY BUSI NESS AND --
7 Q. HELPFUL TO WHAT?

8 A. HELPFUL TO HELP THE BIDDING AND DECISION THAT NORCAL
9 ACTUALLY BIG COMPANY, BUT A, YOU KNOW, SUB WILL WORK TRYING TO
10 KEEP --

11 Q. ARE YOU SAYING MIKE SANGIACOMO SUGGESTED TO YOU THAT
12 SHAKING HANDS WITH THE MAYOR, INTRODUCING YOURSELF TO HIM,
13 WOULD BE HELPFUL TO NORCAL GETTING THE CONTRACT?

14 A. IT'S NOT TO GET THE CONTRACT, BUT IN ONE OF THE KEY
15 THINGS THAT THEY, IN THE BID I THINK SOMEHOW IF THE BID LOCAL,
16 SMALL BUSINESS, WHATEVER --

17 Q. I'M JUST TRYING TO FIX THE DATE OF THIS MEETING.

18 A. RIGHT.

19 Q. THERE WOULD BE NO NEED TO ASSIST NORCAL IN EXPLAINING
20 THAT A MINORITY-OWNED BUSINESS WAS PART OF THE PROPOSAL AFTER
21 THE COUNCIL VOTED, WOULD THERE, BECAUSE WHATEVER DECISION THEY
22 MAKE, THAT'S THEIR DECISION. IT ONLY MAKES SENSE TO HELP
23 NORCAL EXPLAIN TO THE MAYOR THAT THEY WERE GOING TO DO THIS
24 PROPOSAL USING A MINORITY-OWNED BUSINESS WOULD ONLY MAKE SENSE
25 BEFORE THE VOTE, RIGHT?

26 A. THAT'S RIGHT, YES.

27 Q. SO DOESN'T THAT REFRESH YOUR RECOLLECTION THAT THIS
28 MEETING HAPPENED BEFORE THE VOTE?

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1 A. YES. NOW I REMEMBER.

2 Q. ARE YOU SURE YOU REMEMBER THAT?

3 A. YES.

4 Q. I WASN'T THERE, MR. DUONG, I DON'T KNOW WHAT
5 HAPPENED. WE HAVE TO RELY ON WITNESSES LIKE YOURSELF, SO I

6 WANT YOU THINK CAREFULLY AND TELL US YOUR BEST ANSWER.

7 A. (NO RESPONSE.)

8 Q. WHILE YOU'RE THINKING, WE HAVE BEEN GOING OVER AN
9 HOUR. WHY DON'T WE TAKE A RECESS AND YOU CAN STEP OUTSIDE,
10 HAVE A GLASS OF WATER, AND WE WILL COME BACK.

11 THE FOREMAN: BEFORE WE DEPART, LET ME READ A
12 CONFIDENTIALITY ADMONITION.

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

22 THE WITNESS: YES.

23 THE FOREMAN: THANK YOU. LET'S ADJOURN FOR 10
24 MINUTES.

25 (A BRIEF RECESS WAS TAKEN.)

26 THE FOREMAN: MAY I CALL THIS SESSION OF THE GRAND
27 JURY BACK TO ORDER, PLEASE. LET THE RECORD SHOW ALL THE GRAND
28 JURORS ARE HERE.

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1 MR. FINKELSTEIN: WE'LL HAVE MR. DUONG RESUME THE
2 STAND.

3 BY MR. FINKELSTEIN:

4 Q. SO MR. DUONG, I JUST WANT TO CAUTION YOU THAT YOU'VE
5 ALREADY BEEN SWORN IN THIS INVESTIGATION, SO YOU'RE STILL
6 UNDER OATH. DO YOU UNDERSTAND THAT?

7 A. YES.

8 Q. WHY DON'T WE SHOW MR. DUONG EXHIBIT 15. HAVE YOU
9 SEEN EXHIBIT 15 BEFORE, MR. DUONG?

10 A. YES.

11 Q. AND LOOKING AT THE BOTTOM OF THE EXHIBIT, THE
12 SIGNATURE UNDERNEATH CALIFORNIA WASTE SOLUTIONS, INC. AND
13 ABOVE THE WORDS DAVID T. DUONG, PRESIDENT, IS THAT YOUR
14 SIGNATURE?

15 A. YES.

16 Q. DID YOU SIGN THAT ON OCTOBER 9, 2000?

17 A. YES.

18 Q. WHAT IS EXHIBIT 15?

19 A. THE ADDENDUM AGREEMENT BETWEEN NORCAL WASTE SYSTEMS,
20 INC., AND CALIFORNIA WASTE SOLUTIONS FOR PROCESSING
21 RESIDENTIAL RECYCLE MATERIALS FROM THE CITY OF SAN JOSE.

22 Q. NOW, THE DAY OF THIS ADDENDUM IS OCTOBER 9, 2000,
23 CORRECT?

24 A. YES.

25 Q. THAT WOULD BE THE MONDAY BEFORE THE TUESDAY, OCTOBER
26 10, 2000 COUNCIL VOTE ON THE NORCAL PROPOSAL, CORRECT?

27 A. YES.

28 Q. AND WHY IS IT THAT YOU AND NORCAL ENTERED INTO THIS

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2 A. (NO RESPONSE.)

3 Q. LET ME WITHDRAW THAT QUESTION. LET ME DIRECT YOUR
4 ATTENTION TO SOME LANGUAGE IN THERE. THE ADDENDUM STARTS OUT
5 BY SAYING, "THE PARTIES HAVE LEARNED." DO YOU SEE THAT?

6 A. YES.

7 Q. WHO ARE THE PARTIES TO THIS ADDENDUM?

8 A. THAT'S BETWEEN CALIFORNIA WASTE SOLUTIONS AND NORCAL.

9 Q. SO THAT WOULD BE YOU AND MIKE SANGIACOMO?

10 A. YES.

11 Q. SO YOU'RE ONE OF THE PARTIES?

12 A. YES.

13 Q. SO THE EXHIBIT 15 ADDENDUM SAYS, "THE PARTIES HAVE
14 LEARNED THAT THE CITY OF SAN JOSE MAY REQUIRE CALIFORNIA WASTE
15 SOLUTIONS INC. AND NORCAL WASTE SYSTEMS, INC. TO PROVIDE WAGE
16 AND BENEFIT PACKAGES THAT ARE DIFFERENT THAN CWS' S CURRENT
17 WAGE AND BENEFIT PACKAGES." DO YOU SEE THAT?

18 A. YES.

19 Q. AND HOW DID THE PARTIES LEARN THAT THE CITY MAY
20 REQUIRE THAT?

21 A. WE JUST HEARD IT FROM NORCAL.

22 Q. WHO?

23 A. MIKE SANGIACOMO AND BILL JONES.

24 Q. WHAT DID MIKE SANGIACOMO AND BILL JONES TELL YOU?

25 A. WHAT THEY SAID IS THAT THE SAN JOSE WILL REQUIRE US
26 TO PAY THE CURRENT WAGE FOR THE PEOPLE WHO WORK CURRENTLY AT
27 THE RECYCLING COMPANY. WE HAVE TO ADAPT TO WHATEVER THEY GET
28 PAID AND WHATEVER BENEFIT THEY GET PAID FOR.

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1 SO NORCAL TELLING US THAT THIS IS GOING TO BE A
2 DIFFERENT WAGE THAN OUR ILWU.

3 Q. AND WHEN YOU SAY IT'S DIFFERENT THAN ILWU WAGES AND
4 BENEFITS, DO YOU MEAN THAT THESE ARE THE TEAMSTER WAGES AND
5 BENEFITS?

6 A. YES.

7 Q. AND DID EITHER MIKE SANGIACOMO OR BILL JONES TELL YOU
8 WHO IN THE CITY WAS TELLING THEM THAT CWS HAD TO AGREE TO PAY
9 A DIFFERENT WAGE AND BENEFIT PACKAGE THAN WHAT WAS IN THEIR
10 PROPOSAL?

11 A. AT THIS TIME MIKE SAID TO US, TEAMSTER IS GOING TO
12 FIGHT REAL HARD TO GET THE EMPLOYEES THERE IN SAN JOSE TO GET
13 THE SAME PAY THEY ARE GETTING NOW.

14 Q. RIGHT.

15 A. THEREFORE IT'S, VERY HARD FOR NORCAL TO GET THE
16 CONTRACT IF TEAMSTERS ARE FIGHTING, AND THE MAYOR'S OFFICE IS
17 CONCERNED.

18 Q. NOW, WAS THIS A CONVERSATION FACE TO FACE OR BY
19 TELEPHONE?

20 A. TELEPHONE.

21 Q. OKAY. AND WHO WAS ON THE PHONE CONVERSATION, WAS IT
22 YOU, MIKE SANGIACOMO, AND BILL JONES, OR JUST YOU AND MIKE
23 SANGIACOMO OR YOU AND BILL JONES?

24 A. MYSELF, I AND MIKE SANGIACOMO, AND I THINK BILL JONES
25 IN MIKE'S OFFICE.

26 Q. IN YOUR OFFICE?

27 A. NO, IN MIKE SANGIACOMO'S OFFICE.

28 Q. I'M SORRY, BILL JONES IS IN MIKE SANGIACOMO'S OFFICE?

1 A. RIGHT.

2 Q. THEY ARE ON A SPEAKERPHONE?

3 A. YES.

4 Q. YOU' RE I N YOUR OAKLAND OFFICE?

5 A. YES.

6 Q. AND WHEN DID THIS CONVERSATION TAKE PLACE, WAS IT THE

7 SAME DAY, OCTOBER 9TH OR BEFORE THAT?

8 A. WHAT DAY IS THIS ON, OCTOBER 9?

9 Q. I ' M SORRY?

10 A. WHAT DAY IS THIS?

11 Q. OCTOBER 9, 2000 WAS A MONDAY.

12 A. MONDAY.

13 Q. OCTOBER 10, 2000 WAS A TUESDAY. THAT WAS THE FIRST

14 CITY COUNCIL VOTE.

15 A. (NO RESPONSE.)

16 Q. LET ME ASK YOU THIS: DO YOU THINK YOU WERE I N YOUR

17 OFFICE I N OAKLAND ON EITHER SATURDAY OR SUNDAY BEFORE THIS

18 MONDAY?

19 A. NO.

20 Q. SO YOU CAN RULE OUT THIS CONVERSATION TAKING PLACE ON

21 EITHER SATURDAY OR SUNDAY, CORRECT?

22 A. THAT' S CORRECT.

23 Q. SO DOESN' T THAT LEAVE MONDAY, OCTOBER 9, RIGHT?

24 A. YES.

25 Q. OR THE FRIDAY, OCTOBER 6, RIGHT?

26 A. YES.

27 Q. NOW, WE KNOW THAT ON WEDNESDAY, OCTOBER 4, YOU SENT

28 THE LETTER TO THE MAYOR SAYING YOU' RE GOING TO USE THE

1 LONGSHOREMEN, RIGHT?

2 A. YES.

3 Q. THIS CONVERSATION MUST HAVE TAKEN PLACE AFTER YOU

4 SENT THAT LETTER?

5 A. YES.

6 Q. I ASSUME IT HAD TO TAKE PLACE NO LATER THAN MONDAY,

7 OCTOBER 9.

8 A. YES.

9 Q. SO WHEN DID IT TAKE PLACE?

10 A. HAVE TO BE ON THE OCTOBER 9.

11 Q. MONDAY?

12 A. YES.

13 Q. NOW, YOU WERE TELLING US WHAT MIKE SANGIACOMO TOLD

14 YOU IN THIS PHONE CONVERSATION ABOUT CWS HAVING TO PAY A

15 DIFFERENT WAGE AND BENEFIT PACKAGE, CORRECT?

16 A. YES.

17 Q. WHAT DID HE TELL YOU AGAIN?

18 A. HE TOLD ME THAT TO WIN, FOR THEM TO WIN SAN JOSE

19 MATERIAL, THEY HAD TO USE TEAMSTER. AND THEREFORE THAT, IT'S

20 REQUIRED TO USE TEAMSTERS AS COLLECTION, BUT IT ALSO REQUIRE

21 US AS A SUB TO USE TEAMSTER.

22 Q. SO ARE YOU SAYING THAT MIKE SANGIACOMO SUGGESTED TO

23 YOU THAT IN ORDER FOR YOU AND IN ORDER FOR NORCAL TO WIN THIS

24 CONTRACT FROM THE CITY OF SAN JOSE, HE BELIEVED THAT YOU HAD

25 TO SWITCH FROM THE LONGSHOREMEN TO THE TEAMSTERS?

26 A. YES.

27 Q. ARE YOU SURE ABOUT THAT?

28 A. OKAY. LET ME -- THAT'S LATER. THIS IS THE TIME THAT

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1 THEY SAY WE HAVE TO PAY, WE HAVE TO USE TEAMSTER MEMBER WHO IS
2 CURRENTLY WORKING FOR OTHER RECYCLING COMPANY. WE HAVE TO USE
3 TEAMSTER MEMBERS AND WE HAVE TO PAY THE CURRENT RATE.

4 Q. RIGHT.

5 A. THE TEAMSTER RATE.

6 Q. RIGHT. IN OTHER WORDS, MIKE SANGIACOMO WAS TELLING
7 YOU IN THIS PHONE CONVERSATION ON THE SPEAKERPHONE WITH
8 BILL JONES THAT CWS HAS TO SWITCH FROM LONGSHOREMEN WAGES AND
9 BENEFITS TO TEAMSTER WAGES AND BENEFITS, RIGHT?

10 A. YES.

11 Q. AND YOU HAVE TO SWITCH UNIONS FROM LONGSHOREMEN TO
12 TEAMSTERS, RIGHT?

13 A. AT THE TIME THAT WE SIGNING THIS, WE ONLY AGREED TO
14 USING THE TEAMSTER PACKET WITH TEAMSTER MEMBERS TO REPLACE
15 WORKERS, FOR THE PEOPLE WHO WERE DOING THE WORK NOW ARE
16 TEAMSTER.

17 Q. LET ME BACK UP A SECOND. THE EXISTING CONTRACTOR WAS
18 WASTE MANAGEMENT, RIGHT?

19 A. AT THAT TIME, YES.

20 Q. THEY USED TEAMSTER LABOR FOR THE RECYCLABLES, RIGHT?

21 A. YES.

22 Q. IF YOU GOT THE CONTRACT AND THEY DIDN'T, YOU WOULD
23 HAVE TO HIRE, AS A CONDITION OF THE RFP, EXISTING WORKERS
24 FIRST, RIGHT?

25 A. YES.
26 Q. WHICH MEANS YOU HAVE TO HIRE THESE TEAMSTER WORKERS,
27 RIGHT?
28 A. YES.

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1 Q. ARE YOU SUGGESTING THAT ON THIS MONDAY, OCTOBER 9,
2 YOU ONLY UNDERSTOOD THAT -- STRIKE THAT.
3 ARE YOU SUGGESTING THAT ON THIS MONDAY, OCTOBER 9
4 PHONE CONVERSATION, WHAT YOU CAME AWAY WITH IS YOU CAN STILL
5 USE LONGSHOREMEN, BUT YOU HAVE TO PAY THEM TEAMSTER WAGES? IS
6 THAT WHAT YOU'RE SAYING, OR ARE YOU SAYING YOU HAD TO USE
7 TEAMSTERS AND PAY THE TEAMSTERS WAGES?
8 A. WELL, WHEN WE SIGNING IT, THEY, NORCAL, TALKING ABOUT
9 THAT WE HAVE TO USE THE SAME MEMBER TEAMSTER WHO ARE DOING THE
10 CURRENT WORK FOR SOMEONE ELSE. WE HAVE TO USE THEM AND WE
11 HAVE TO PAY CURRENT RATE PAY AND BENEFIT.
12 Q. AND WHEN YOU USE THEM, WERE YOU GOING TO USE THEM AS
13 TEAMSTERS OR LONGSHOREMEN?
14 A. TEAMSTER.
15 Q. OKAY. SO MIKE -- ARE YOU SAYING THAT MIKE SANGIACOMO
16 EXPLAINED TO YOU THAT IN ORDER TO GET A CONTRACT FROM THE
17 CITY, CWS HAD TO USE TEAMSTERS INSTEAD OF LONGSHOREMEN?
18 A. THAT'S WHAT NORCAL ALWAYS TELLING US, THAT WE HAVE TO
19 USE TEAMSTER. BUT WE DID NOT AGREE TO IT. WE JUST SAY --
20 Q. WE'LL GET TO WHAT YOU AGREED TO IN A MINUTE. I WANT
21 TO FIRST FOCUS ON WHAT EXACTLY MIKE SANGIACOMO TOLD YOU. CAN
22 YOU TELL US AGAIN WHAT HE TOLD YOU?

23 A. NORCAL SAID TO US --
24 Q. WHEN YOU SAY NORCAL, DO YOU MEAN MR. SANGIACOMO?
25 A. OR BILL JONES.
26 Q. YOU'RE NOT SURE WHICH?
27 A. I'M NOT SURE WHICH ONE WAS SAYING IT. THEY WERE BOTH
28 ON THE PHONE.

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1 Q. EITHER MIKE SANGIACOMO OR BILL JONES SAID WHAT?
2 A. THEY SAID TO US WE HAVE TO GO INTO THE AGREEMENT,
3 THAT WE HAVE TO USE CURRENT EMPLOYEE WHO ARE EMPLOYED WITH THE
4 CURRENT CONTRACTOR, THAT WE WILL REPLACE ALL THEIR WORK AND
5 PAY THE RATE CURRENTLY THAT THEY HAVE, AND WE HAVE TO PAY THE
6 BENEFITS THAT CURRENTLY THAT THEY HAVE. AND THAT'S WHAT, YOU
7 KNOW, THEY WANT US TO AGREE TO.
8 Q. OKAY. DID HE SAY ANYTHING ABOUT YOU HAVE TO
9 RECOGNIZE THE TEAMSTER'S UNION AS WELL OR NOT?
10 A. AT THE TIME HE DID MENTION THAT THEY USE TEAMSTER,
11 AND THEY SAID TEAMSTERS FIGHT REAL HARD TO MAKE US USE
12 TEAMSTERS.
13 Q. TO MAKE WHAT?
14 A. TO MAKE US USE TEAMSTER.
15 Q. TO ORGANIZE CWS AS A TEAMSTER EMPLOYER?
16 A. YES.
17 Q. NOW, DID EITHER MIKE JONES OR -- DID EITHER MIKE
18 SANGIACOMO OR BILL JONES EXPLAIN WHO IN THE CITY WAS REQUIRING
19 THIS?
20 A. THEY SAY THE TEAMSTER HAS COMMUNICATED WITH THE MAYOR

21 AND THE MAYOR' S OFFICE CONCERNED.

22 Q. CONCERNED?

23 A. YES.

24 Q. WELL, IF YOU LOOK AT THIS AT THIS ADDENDUM, EXHIBIT
25 15, YOU HAVE IN FRONT OF YOU, IN THE VERY FIRST PARAGRAPH, THE
26 RECITAL THERE, IT DOESN' T SAY THE CITY IS CONCERNED, IT SAYS
27 THE CITY MAY REQUIRE, RIGHT?

28 A. YES.

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1 Q. SO WAS THIS A CONCERN OR A REQUIREMENT?

2 A. YES.

3 Q. YOU SIGNED THE AGREEMENT, MR. DUONG; I WASN' T THERE.
4 WAS IT A CONCERN OR REQUIREMENT?

5 A. WELL, THIS IS WHAT THEY CLEARLY TO US, THEY SAID TO
6 US, IS FOR THEM TO WIN THIS CONTRACT, IT' S REQUIRED US TO USE,
7 TO PAY FOR BENEFIT AND RATE CURRENTLY EMPLOYEE GETTING PAID.

8 Q. RIGHT, BUT THE ADDENDUM DOESN' T SAY THE PARTIES
9 BELIEVE IN ORDER TO IMPROVE THEIR CHANCES TO WIN THE CONTRACT
10 IT WOULD BE A GOOD IDEA TO PAY TEAMSTERS WAGES AND BENEFITS OR
11 USE TEAMSTERS; IT DOESN' T SAY THAT, DOES IT?

12 A. NO.

13 Q. IT SAYS THE CITY MAY REQUIRE. THAT' S WHAT IT SAYS?

14 A. RIGHT.

15 Q. YOU SIGNED IT, RIGHT?

16 A. YES.

17 Q. AND DID YOU READ IT BEFORE YOU SIGNED IT?

18 A. YES.

19 Q. YOU TALKED TO MIKE SANGIACOMO OR BILL JONES BEFORE
20 YOU SIGNED IT?

21 A. YES.

22 Q. AND SO DID YOU BELIEVE YOU UNDERSTOOD EVERYTHING IN
23 THIS SHORT ONE-PAGE, FOUR-PARAGRAPH DOCUMENT?

24 A. YES.

25 Q. SO WHEN YOU READ THAT FIRST PARAGRAPH, IT SAID THE
26 CITY MAY REQUIRE THE PARTIES, DID YOU UNDERSTAND WHAT THEY
27 WERE TALKING ABOUT?

28 A. YES.

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1 Q. WHAT DID YOU UNDERSTAND THEY WERE TALKING ABOUT?

2 A. THEY TALKING ABOUT TEAMSTER RIGHT NOW EMPLOYED AT
3 TEAMSTER. AND BOB MORALES IS TALKING TO OUR CITY COUNCIL AND,
4 YOU KNOW, THE MAYOR'S OFFICE, AND TRYING TO MAKE SURE THAT
5 WHOEVER GET WORK, IT HAVE TO BE TEAMSTER.

6 Q. I UNDERSTAND.

7 A. SO NORCAL COME TO US AND SAY THAT IT'S REQUIRED TO
8 PAY THE BENEFIT AND RATE RIGHT NOW FOR WHOEVER DOING THIS
9 RIGHT NOW. AND THE CONCERN, YOU KNOW, NORCAL SAY THAT THE
10 MAYOR HAVE CONCERN BECAUSE OF TEAMSTER. BOB MORALES IS ALL
11 OVER AT CITY HALL TRYING TO MAKE SURE THAT WHOEVER GET THIS
12 HAVE TO BE TEAMSTER.

13 Q. OKAY.

14 A. AND ALL WE AGREED TO THEM IS WE HAVE A CONTRACT WITH
15 ILWU, WE CANNOT AGREE TO BE TEAMSTER, NUMBER ONE.

16 NUMBER TWO, WE UNDERSTANDING THE LABOR LAWS. WE

17 CANNOT TAKE ONE OR THE OTHER, THAT'S THE EMPLOYEE'S CHOICE.
18 SO ALL WE'RE AGREEING TO, WE UNDERSTAND IT MIGHT REQUIRE
19 BECAUSE WE DON'T KNOW IF THE CITY GOING TO MAKE US PAY THE
20 SAME BENEFITS, SAME RATE, SAME EMPLOYEE, WHICH IS LIKE ALL THE
21 PEOPLE BEEN THERE A LONG TIME. THEIR WAGES ARE REAL HIGH AND
22 BENEFITS JUST REAL HIGH COMPARED TO WHEN WE GO TO AGREEMENT
23 WITH NORCAL, ALL WE AGREED IS WE HAVE ILWU, AND THAT'S WHAT
24 WE'RE USING. SO THIS IS WHAT AGREEMENT MAY REQUIRE OR IT MAY
25 REQUIRE. WE HAVE TO USE THEM.

26 Q. MR. DUONG, DID YOU HAVE ANY ESTIMATE OF HOW MUCH MORE
27 EXPENSE IT WAS GOING TO BE FOR CWS IF YOU AGREED TO THIS?

28 A. AT THE TIME THAT WE SIGNED THIS, NO.

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1 Q. YOU DIDN'T KNOW IT WAS GOING TO BE ABOUT TWO MILLION
2 A YEAR TO PAY THESE EXTRA WAGES AND BENEFITS?

3 A. NO.

4 Q. DID YOU HAVE ANY IDEA WHAT IT WAS GOING TO BE?

5 A. AT THE TIME WE SIGNED IT, NO.

6 Q. NO IDEA WHATSOEVER?

7 A. RIGHT. WE KNOW IT'S A LOT HIGHER THAN WE PAID TO
8 ILWUS.

9 Q. WHAT IS A -- DOES A LOT HIGHER MEAN MILLIONS,
10 HUNDREDS OF THOUSANDS, TENS OF THOUSANDS, HUNDREDS OF DOLLARS,
11 WHAT?

12 A. NO. WE, THIS IS -- I MYSELF HEARD IT FROM THE
13 CONSULTANT WHO IS, YOU KNOW, TRYING TO PREPARE THE PROPOSAL
14 FOR US WHEN WE ARE GOING TO BID.

- 15 Q. IS THAT BARBARA ZEITMAN-OLSEN?
- 16 A. NO.
- 17 Q. ROTTENBERG?
- 18 A. YES. AND WHEN WE HEAR ALL THIS, I COMMUNICATING WITH
- 19 HIM AND HE SAY THAT CURRENTLY THE TEAMSTER PAYING, GET PAID
- 20 LIKE ABOUT THREE DOLLARS TO FOUR DOLLARS HIGHER THAN WE ARE
- 21 PAYING PER HOUR THAN WE ARE PAYING FOR ILWU.
- 22 Q. THAT'S A SIGNIFICANT INCREASE.
- 23 A. THAT'S CORRECT.
- 24 Q. THAT'S 40 PERCENT HIGHER WAGES AND BENEFITS.
- 25 A. RIGHT.
- 26 Q. THAT'S NOT AN INSIGNIFICANT AMOUNT OF MONEY.
- 27 A. THAT'S BIG MONEY.
- 28 Q. WHEN MIKE SANGIACOMO AND BILL JONES IN THE PHONE

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- 1 CONVERSATION SUGGESTED TO YOU THAT YOU NEED TO USE, PAY THESE
- 2 TEAMSTER WAGES AND BENEFITS, DID YOU REMIND THEM THAT THEY HAD
- 3 ASKED YOU TO SEND THE LETTER JUST THE WEEK BEFORE WHERE YOU
- 4 TOLD THE MAYOR YOU' RE GOING TO USE THE LONGSHOREMEN?
- 5 A. YES.
- 6 Q. DID YOU ASK THEM WHY ARE WE CHANGING NOW, WE ALREADY
- 7 PUT THE PROPOSAL IN WITH THE LONGSHOREMEN?
- 8 A. YES.
- 9 Q. WHAT DID THEY SAY?
- 10 A. WELL, THEY SAY TO US THE TEAMSTER IS WORKING AND
- 11 TRYING TO, THE TEAMSTER WORK AND THEY SUCCESSFUL, IN THE NEW
- 12 CONTRACT WE HAVE TO BE TEAMSTER.

13 Q. BUT LOOK. THIS IS AN AGREEMENT BETWEEN CWS AND
14 NORCAL, RIGHT?

15 A. YES.

16 Q. THE FIRST PARAGRAPH, IT DOESN'T SAY THE PARTIES ARE
17 AFRAID THAT THE TEAMSTERS ARE GOING TO LOBBY HEAVILY AGAINST
18 OUR PROPOSAL, AND THEREFORE TO DEAL WITH THAT WE'RE GOING TO
19 DO THIS. THAT'S NOT WHAT IT SAYS?

20 A. NO.

21 Q. IT SAYS THE CITY MAY REQUIRE.

22 A. YES.

23 Q. WHAT DID MIKE SANGIACOMO OR BILL JONES TELL YOU IN
24 THIS PHONE CONVERSATION THAT YOU UNDERSTOOD TO BE THE CITY
25 REQUIRING THIS CHANGE?

26 A. I THINK THIS IS, I THINK THIS IS THE DAY, NEXT DAY
27 THAT'S THE VOTE.

28 Q. YES.

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1 A. OKAY. AND WHAT THEY SAY IS THIS. THE STAFF IS GET
2 READY TO RECOMMEND FOR NORCAL CONTRACT. AND IT WILL BE TAKING
3 IT TO THE COUNCIL FOR VOTE, AND NORCAL WILL NOT GOING TO GET
4 THIS VOTE IF WE NOT AGREE TO PAYING FOR TEAMSTER. AND THAT IS
5 WHAT NORCAL IS TELLING US, THAT'S THE PRESSURE TEAMSTERS HAVE
6 BEEN PUTTING ON THE CITY AND CITY COUNCIL AND NORCAL TO MAKE
7 US USE TEAMSTER.

8 Q. YOU LOOKED AT THE RFP BACK IN THE SUMMER OF 2000 WHEN
9 YOU WERE THINKING ABOUT PUTTING IN YOUR OWN BID, RIGHT?

10 A. YES.

11 Q. DID YOU SEE ANYTHING IN THE RFP THAT SAID YOU HAD TO
12 USE TEAMSTERS?

13 A. NO.

14 Q. WHEN NORCAL PUT ITS PROPOSAL TOGETHER IT WAS A
15 PROFESSIONAL JOB, THE DOCUMENT, IT WAS ALL NICELY BOUND, HAD
16 COLOR AND EVERYTHING, RIGHT?

17 A. YES.

18 Q. ANYTHING IN THE PROPOSAL ABOUT USING TEAMSTERS?

19 A. NO.

20 Q. AND WHEN YOU SENT YOUR OCTOBER 4 LETTER TO THE MAYOR
21 AT THE REQUEST OF NORCAL, DID THEY ASK YOU TO PUT IN THE
22 LETTER THAT YOU'RE GOING TO USE TEAMSTERS?

23 A. NO.

24 Q. SO HERE WE ARE ON MONDAY, OCTOBER 9, AND NORCAL IS
25 TALKING TO YOU ABOUT WE HAVE TO USE TEAMSTERS. DID YOU SAY TO
26 THEM, WHAT HAPPENED, JUST A FEW DAYS AGO IT WAS FINE USING
27 LONGSHOREMEN?

28 A. (NO RESPONSE.)

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1 Q. DID YOU ASK THAT QUESTION?

2 A. I DID.

3 Q. WHAT ANSWER DID YOU GET?

4 A. THE ANSWER I GET IS TEAMSTERS IS VERY STRONG. AND
5 THEY ARE WORKING AROUND THE CITY COUNCIL AND THE MAYOR'S
6 OFFICE, AND THIS IS GOING OUT FOR A VOTE. AND IF YOU NOT
7 AGREEING WITH THEY ASK FOR, WE CANNOT GET OUR CONTRACT
8 APPROVAL.

9 Q. LET ME ASK YOU THIS: BEFORE THIS MONDAY, OCTOBER 9
10 AND THIS CONVERSATION, HAD BOB MORALES EVER TALKED TO YOU
11 ABOUT GETTING YOU TO AGREE TO LET THE TEAMSTERS ORGANIZE CWS
12 IN SAN JOSE?

13 A. NO.

14 Q. HE HAD NOT?

15 A. NO.

16 Q. HAD BOB MORALES TALKED TO YOU ABOUT SOME NEUTRALITY
17 AGREEMENT WITH THE TEAMSTERS?

18 A. YES.

19 Q. WHEN DID HE TALK TO YOU ABOUT THAT, WAS THAT BEFORE
20 THIS OCTOBER 9 AGREEMENT?

21 A. I THINK AFTER OCTOBER 9.

22 Q. SO BEFORE THE OCTOBER 9 AGREEMENT YOUR RECOLLECTI ON
23 IS YOU HAD NO CONVERSATIONS WITH BOB MORALES ABOUT WHETHER OR
24 NOT CWS WAS GOING TO USE TEAMSTERS IN SAN JOSE?

25 A. I REMEMBER THERE' S A REASON WHY WE SIGNING THIS,
26 THAT' S BECAUSE WE HAVE TO SIGN SOME DOCUMENT FOR TEAMSTER.

27 Q. I' M NOT SURE I UNDERSTAND YOUR ANSWER.

28 A. YOU JUST ASKED ME --

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1 Q. I' M SAYING BEFORE YOU SIGNED THIS MONDAY, OCTOBER 9
2 ADDENDUM, DID BOB MORALES TRY TO GET YOU TO AGREE TO USE
3 TEAMSTER LABOR IN SAN JOSE?

4 A. I THINK THEY ASKED US TO SIGN, LIKE, A CARD CHECK.

5 Q. CARD CHECK AGREEMENT?

6 A. YES.

7 Q. SOMETIMES CALLED A NEUTRALITY AGREEMENT?
8 A. RIGHT.
9 Q. WHEN DID HE ASK YOU TO SIGN THIS, BEFORE OR AFTER
10 THIS -- ADDENDUM?
11 A. (NO RESPONSE.)
12 Q. DO YOU WANT TO THINK ABOUT THAT? IT'S ALMOST NOON,
13 WE CAN TAKE A RECESS. WOULD YOU LIKE TO THINK ABOUT THAT?
14 A. I CAN ANSWER THAT. I THINK THAT'S, YOU KNOW, BECAUSE
15 THE TEAMSTER ASK ME TO SIGN SOMETHING.
16 Q. WHEN?
17 A. NORCAL ASKED ME, IT'S PROBABLY MAYBE ON THE SAME DAY
18 WITH THIS BUT IN THE MORNING, OR MAYBE, YOU KNOW, EARLIER THAN
19 THIS, TO SIGN SOMETHING. AND I CANNOT SIGN FOR IT, BECAUSE I
20 KNOW I SIGN IT, IT WILL MEAN IT WILL COST US MORE MONEY.
21 Q. HER'S MY QUESTION. WE HAVE BEEN FOCUSING ON THIS
22 RECITAL IN THE FIRST PARAGRAPH OF YOUR ADDENDUM AGREEMENT,
23 RIGHT, THE FIRST PARAGRAPH, THE CITY MAY REQUIRE?
24 A. NO. I KEPT TRYING TO REMEMBER WHAT TAKE PLACE, WHY I
25 SIGNED THIS.
26 Q. I UNDERSTAND THAT, BUT MY QUESTION TO YOU IS THIS:
27 WAS IT THE TEAMSTERS WHO WERE REQUIRING IT OR THE CITY WHO WAS
28 REQUIRING IT?

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1 A. NORCAL REQUIRES. TEAMSTER REQUIRE NORCAL, AND NORCAL
2 REQUIRE US.
3 Q. WHY DOES IT SAY THE CITY IS REQUIRING YOU WHEN IT'S
4 THE TEAMSTERS THAT ARE REQUIRING YOU?

5 A. (NO RESPONSE.)

6 Q. ISN'T THAT AN ODD WAY TO WRITE AN AGREEMENT TO SAY
7 THE CITY IS GOING TO REQUIRE IT IF IN FACT IT'S THE TEAMSTERS
8 THAT ARE GOING TO REQUIRE IT? WOULDN'T YOU AGREE THAT'S AN
9 ODD WAY TO WRITE THIS AGREEMENT UNLESS IT WAS THE CITY THAT
10 WAS REQUIRING IT?

11 A. I THINK THAT'S, MY REMEMBER IS BEFORE WE GO TO THE
12 VOTE, TEAMSTER PRESSURING NORCAL THAT NORCAL TO USE TEAMSTER
13 AND PRESSURE US TO SIGN THE CARD CHECK.

14 Q. BEFORE THIS MONDAY?

15 A. BEFORE THE VOTE.

16 Q. AND WOULD THAT BE BEFORE THIS MONDAY OR ON THAT
17 MONDAY?

18 A. (NO RESPONSE.)

19 Q. ARE YOU SUGGESTING THAT MR. MORALES WAITED TO THE
20 LAST MINUTE, THE DAY BEFORE THE VOTE, TO PRESSURE CWS TO USE
21 TEAMSTERS?

22 A. THAT'S WHAT NORCAL DID TO US.

23 Q. WHAT ABOUT THE TEAMSTERS, WHEN DID THE TEAMSTERS TALK
24 TO YOU?

25 A. UH --

26 Q. THEY DIDN'T TALK TO YOU BEFORE MONDAY, BEFORE THE
27 VOTE?

28 A. THEY TRIED TO GET US TO GO INTO IT. I THINK THAT'S

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1 BEFORE THE NINTH.

2 Q. THEY TRIED TO GET YOU TO AGREE TO THE CARD CHECK

- 3 AGREEMENT, RIGHT?
- 4 A. RIGHT.
- 5 Q. THE WAY THE CARD CHECK AGREEMENT WORKS IS EMPLOYEES
- 6 FILL OUT CARDS, AND THE UNION WHO HAS THE MOST CARDS FILLED
- 7 OUT, THAT'S THE UNION THE EMPLOYER RECOGNIZES?
- 8 A. RIGHT.
- 9 Q. IT'S A WAY TO SHORTCUT THE NLRB ELECTION PROCESS,
- 10 RIGHT?
- 11 A. RIGHT.
- 12 Q. SO THE TEAMSTERS TRIED TO PRESSURE YOU BEFORE THAT
- 13 MONDAY TO DO THAT, RIGHT?
- 14 A. YES.
- 15 Q. AND YOU REFUSED, RIGHT?
- 16 A. RIGHT.
- 17 Q. WHAT CHANGED ON THAT MONDAY THAT GOT YOU TO SIGN THIS
- 18 AGREEMENT THAT YOU REFUSED TO SIGN WHEN THE TEAMSTERS BY
- 19 THEMSELVES WERE PRESSURING YOU?
- 20 A. BECAUSE NORCAL PRESSURE US. WE ARE SUB, NORCAL
- 21 PRESSURE US, SAY THAT WE NEED YOU TO SIGN THIS TO STOP VOTE.
- 22 Q. WHY DOESN'T THE AGREEMENT SAY, "TEAMSTERS MAY CAUSE
- 23 PROBLEMS UNLESS THE PARTIES AGREE TO THE FOLLOWING, AND
- 24 THEREFORE WE AGREE AS FOLLOWS"?
- 25 WHAT DOESN'T THE AGREEMENT READ THAT WAY? WHY DOES
- 26 IT POINT TO THE CITY OF SAN JOSE AS THE ONE THAT'S REQUIRING
- 27 THIS CHANGE?
- 28 A. (NO RESPONSE.)

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1 Q. WHY DON'T WE HAVE YOU THINK ABOUT THAT AND TAKE OUR
2 LUNCH RECESS.

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

4 LET ME REMIND YOU, THE CONFIDENTIALITY ADMONISHMENT
5 APPLIES; YOU'RE NOT TO TALK TO ANYBODY ABOUT WHAT WENT ON IN
6 THE GRAND JURY.

7 THE WITNESS: INCLUDING MY ATTORNEY, RIGHT?

8 MR. FINKELSTEIN: YOU CAN TALK TO YOUR LAWYER.

9 THE FOREMAN: YOU CAN.

10 MR. FINKELSTEIN: IF HE AGREES TO MAINTAIN THE
11 CONFIDENTIALITY. OKAY?

12 THE WITNESS: THANK YOU.

13 (THE LUNCHEON RECESS WAS TAKEN.)

14

15

16

17

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22

23

24

25

26

27

28

1 SAN JOSE, CALI FORNIA

MARCH 14, 2006

2

3

AFTERNOON SESSION:

4

THE FOREMAN: LET ME CALL THE GRAND JURY TO ORDER,
PLEASE, AND LET THE RECORD SHOW ALL 19 JURORS ARE PRESENT.

5

6

BY MR. FINKELSTEIN:

7

Q. GOOD AFTERNOON, MR. DUONG. I' LL REMIND YOU YOU' RE
UNDER OATH, DO YOU UNDERSTAND THAT?

8

9

A. YES.

10

Q. MR. DUONG, WHEN WE BROKE FOR LUNCH WE WERE TALKING
ABOUT THE OCTOBER 9 ADDENDUM BETWEEN NORCAL AND CWS, CORRECT?

11

12

A. YES.

13

Q. AND WE WERE FOCUSED ON THE FIRST PARAGRAPH THAT SAYS,
"THE PARTIES HAVE LEARNED THAT THE CITY OF SAN JOSE MAY
REQUIRE. " DO YOU SEE THAT PARAGRAPH?

14

15

16

A. YES.

17

Q. WHAT DID THE PARTIES LEARN THAT INDICATED TO YOU THAT
THE CITY MAY REQUIRE THESE ADDITIONAL WAGES AND BENEFITS?

18

19

A. WHEN WE SIGNED THIS, NORCAL INFORM US THAT WE HAVE TO
AGREE TO PAY THE TEAMSTER BENEFIT AND PACKET AND NORCAL SAY TO
US, THEY, THE TEAMSTER WORK WITH NORCAL AND THE MAYOR' S OFFICE
TO ASSURE US WE' RE USING THEM, TEAMSTER.

20

21

22

23

Q. OKAY. NOW, DID I UNDERSTAND YOU TO SUGGEST THAT THE
INFORMATION YOU GOT FROM EITHER MIKE SANGIACOMO OR BILL JONES
WAS THAT THE MAYOR' S OFFICE WANTED TO BE ASSURED THAT CWS WAS
GOING TO USE TEAMSTERS, IS THAT WHAT YOU' RE SAYING?

24

25

26

27

A. YES.

28

Q. AND DO YOU REMEMBER WHETHER IT WAS MIKE SANGIACOMO OR

1 BILL JONES WHO SAID THAT?

2 A. MIKE SANGIACOMO.

3 Q. AND DO YOU RECALL WHETHER MR. SANGIACOMO TOLD YOU IN
4 THAT CONVERSATION WHO IN THE MAYOR'S OFFICE WANTED TO BE
5 ASSURED THAT CWS WAS USING TEAMSTERS?

6 A. NO, HE JUST MENTIONED THE MAYOR'S OFFICE.

7 Q. OKAY. SO YOUR TESTIMONY IS THAT MIKE SANGIACOMO TOLD
8 YOU IN THIS OCTOBER 9, 2000 CONVERSATION THAT THE MAYOR'S
9 OFFICE WANTED TO BE ASSURED THAT CWS WOULD BE USING TEAMSTERS;
10 IS THAT CORRECT?

11 A. YES.

12 Q. DID MR. SANGIACOMO SAY ANYTHING ELSE ABOUT THE
13 MAYOR'S OFFICE IN THIS CONVERSATION?

14 A. NO.

15 Q. NOW, SO WHEN YOU SIGNED -- STRIKE THAT. WHEN
16 MR. SANGIACOMO TOLD YOU THAT THE MAYOR'S OFFICE WANTED TO BE
17 ASSURED THAT CWS WAS GOING TO BE WORKING WITH THE TEAMSTERS,
18 WHAT DID YOU TELL MR. SANGIACOMO?

19 A. I TOLD HIM I CAN'T AGREE TO THAT, BECAUSE GIVEN THAT
20 WE HAVE AN AGREEMENT WITH ILWU WHICH IS ALSO GIVING US, WHEN
21 WE GO TO ENTER A CONTRACT WITH YOU, THAT WE BASED ON ILWU'S
22 RATE PACKET AND THE BENEFIT PACKET.

23 Q. SO YOU TOLD MR. SANGIACOMO THAT YOU HAD AN AGREEMENT
24 WITH THE ILWU; IS THAT CORRECT?

25 A. YES.

26 Q. AND BY AGREEMENT BY THE ILWU, YOU WERE REFERRING TO
27 THE COMMITMENT THAT YOU HAD MADE WITH THE ILWU, THAT IF CWS

28 EXPANDED ITS OPERATION TO SAN JOSE, THE WORKERS WOULD BE

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1 COVERED BY THAT COLLECTIVE BARGAINING AGREEMENT?

2 A. YES.

3 Q. YOU ALSO TOLD MR. SANGIACOMO THAT SWITCHING TO
4 TEAMSTERS WOULD INVOLVE A GREATER EXPENSE FOR CWS?

5 A. YES.

6 Q. WHAT DID MR. SANGIACOMO SAY TO THAT?

7 A. HE SAID, DON'T WORRY, THE MAYOR'S OFFICE GOING TO
8 COVER FOR THIS.

9 Q. WHAT DOES THAT MEAN, GOING TO COVER FOR THIS?

10 A. HE SAID THAT THE MAYOR PROMISED HIM, THE MAYOR'S
11 OFFICE, HE SAID THE MAYOR'S OFFICE HAD PROMISED HIM THAT THEY
12 WOULD COVER FOR THE DIFFERENCE BETWEEN ILWU'S CONTRACT AND THE
13 TEAMSTER CONTRACT IF WE GO WITH THE TEAMSTER CONTRACT.

14 Q. DID YOU ASK MR. SANGIACOMO IF HE HAD THAT PROMISE IN
15 WRITING?

16 A. YES.

17 Q. WHAT DID HE SAY ABOUT THAT?

18 A. HE SAID HE HAD A MEETING, AND THAT'S WHAT THE MAYOR'S
19 OFFICE PROMISE HIM.

20 Q. WHAT ABOUT WHETHER HE HAD THAT PROMISE IN WRITING,
21 WHAT DID HE SAY ABOUT THAT?

22 A. NO.

23 Q. HE DIDN'T HAVE IT IN WRITING?

24 A. HE DIDN'T HAVE IT IN WRITING.

25 Q. WHAT DID YOU SAY?

26 A. I SAID, LISTEN, I HAVE A CONTRACT WITH YOU AND I'LL
27 DO THE WORK FOR YOU. YOU BE WORKING ON THE CONTRACT, DO ALL
28 THE BIDDING ON THIS CONTRACT AND WORK WITH THE CITY WITH ILWU

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1 INVOLVED. NOW YOU SAY THAT THE MAYOR PROMISE. WE DO NOT HAVE
2 THE CONTRACT OR WE DON'T HAVE ANYTHING RELATED TO DIRECT WORK
3 WITH THE CITY, AND THE MAYOR PROMISE YOU. IF THAT'S WHAT HE
4 PROMISE YOU, I DON'T KNOW HIS PROMISE, I DIDN'T SEE THE
5 COMMENT. ALL I KNOW IS I HAVE A CONTRACT WITH YOU, AND IF I
6 AGREE TO THIS, THIS IS GOING TO COST ME MONEY. I CAN'T ACCEPT
7 IT.

8 Q. SO WHAT DID MIKE SANGIACOMO SAY THEN?

9 A. HE SAYS, DAVID, TRUST ME. I GET THE PROMISE, AND
10 I'LL STAND BEHIND IT IF WE DON'T GET THE MONEY TO PAY FOR IT.

11 Q. AND THEN WHAT HAPPENED?

12 A. I SAID NO. BECAUSE THIS IS WHAT YOU ASK ME TO AGREE
13 TO, THAT'S SOMETHING WE CANNOT AGREE TO, AND I CANNOT TAKE
14 VERBAL PROMISE FROM YOU TO SAY THAT YOU'RE GOING TO PAY FOR
15 IT.

16 Q. SO THEN WHAT HAPPENED?

17 A. THEN HE SAID, WHAT WE NEED TO GET? I SAID SOMETHING
18 AND BEFORE THIS, BEFORE WE SIGN IT, RIGHT ABOUT THE TIME WE
19 SIGN, NORCAL REQUIRE US TO SIGN SOMETHING, EITHER A LETTER OR
20 SOME DOCUMENT, THAT WHY WE CANNOT DO IT. WE SAID WE CANNOT
21 SIGN IT, NO, WE CANNOT DO IT.

22 AND NORCAL SAY, WHAT IT TAKE FOR YOU TO DO IT?

23 I SAID, YOU HAVE TO SIGN SOMETHING IN BLACK AND

24 WHITE THAT YOU'RE WILLING TO PAY US, NORCAL WILLING TO PAY US
25 FOR THE DIFFERENCE IF WE HAVE TO USE TEAMSTER, AND IF THE COST
26 IS HIGHER THAN WHAT WE AGREED IN THE OAKLAND ILWU'S
27 CONTRACT.

28 Q. SO WHAT DID MR. SANGIACOMO SAY ABOUT THAT?

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1 A. HE GET VERY MAD BECAUSE HE SAY, YOU DON'T TRUST ME ON
2 THIS. AND I THINK I SAID, MIKE, I CAN'T. THAT WOULD BANKRUPT
3 US IF WE DO THAT.

4 I THINK HE SAYS, LET ME GET BACK TO YOU. AND I
5 THINK THAT HE'LL CALL BACK IN LIKE, YOU KNOW, A CERTAIN TIME,
6 WITHIN AN HOUR. I SAID OKAY. WELL, WE AGREE TO THIS, WHY
7 DON'T YOU DRAFT SOMETHING AGREED TO YOU.

8 Q. SORRY? WHO WAS SUPPOSED TO DRAFT THE AGREEMENT, YOU
9 OR NORCAL?

10 A. I THINK THAT WE DRAFT IT. I DON'T KNOW IF THIS IS BY
11 OUR ATTORNEY OR BY PAUL.

12 Q. YOUR ATTORNEY WOULD BE WHO?

13 A. AT THAT TIME WE HAVE THE ATTORNEY WHO WORKED FOR US.
14 AT THAT TIME I THINK IT'S PETER SMITH.

15 Q. PETER SMITH?

16 A. YES.

17 Q. WHERE IS HIS OFFICE?

18 A. HE'S IN OAKLAND.

19 Q. AND IF IT WASN'T PETER SMITH WHO SUGGESTED SOMEONE
20 ELSE MIGHT HAVE DRAFTED IT, WHO WOULD THAT BE?

21 A. YES.

22 Q. WHO WAS THE OTHER PERSON?
23 A. PAUL ROTTENBERG.
24 Q. SO YOU THINK EITHER YOUR ATTORNEY OR YOUR CONSULTANT
25 DRAFTED THIS AGREEMENT?
26 A. YES.
27 Q. IS IT POSSIBLE THAT SOMEONE ELSE DRAFTED THE
28 AGREEMENT AND YOUR ATTORNEY MERELY REVIEWED THE AGREEMENT WITH

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1 SUGGESTED CHANGES?
2 A. IT GET REVIEWED BY NORCAL. SO I RECALL, I THINK WE
3 DRAFTED IT BECAUSE WE WANT TO BE THE ONE THAT'S PROTECTING US.
4 Q. RIGHT.
5 A. I THINK PROBABLY WE DRAFT AND NORCAL ATTORNEY REVIEW.
6 Q. YOU THINK MAYBE PAUL ROTTENBERG HELPED YOU ON THE
7 AGREEMENT?
8 A. YES.
9 Q. OKAY. SO THE REFERENCE TO THE CITY REQUIRING OR MAY
10 REQUIRE, THAT HAS TO DO ABOUT THE MAYOR'S OFFICE WANTING CWS
11 TO WORK WITH THE TEAMSTERS, IS THAT WHAT THE REFERENCE IS
12 ABOUT?
13 A. THAT IS AT THE TIME WHAT I UNDERSTAND.
14 Q. THAT WAS YOUR UNDERSTANDING AT THE TIME BASED ON YOUR
15 CONVERSATION WITH MIKE SANGIACOMO?
16 A. YES.
17 Q. AND IN THIS AGREEMENT NORCAL AGREES TO PAY CWS THE
18 DIFFERENCE IN WAGE AND BENEFITS BETWEEN THE ILWU WAGE AND
19 BENEFITS AND THE TEAMSTER WAGES AND BENEFITS, RIGHT?

- 20 A. YES, EFFECTIVE ON JULY 1, 2002.
- 21 Q. AND YOU AGREED TO THIS, YOU SIGNED IT, RIGHT?
- 22 A. YES.
- 23 Q. HOW WERE YOU GOING TO DEAL WITH THE ILWU AND THE FACT
- 24 THAT YOU HAD GIVEN THEM A COMMITMENT THAT IF YOU EXPANDED
- 25 CWS' S BUSINESS INTO SAN JOSE, THEY WOULD BE REPRESENTING YOUR
- 26 WORKERS?
- 27 A. BY SIGNING THIS, BECAUSE LIKE I SAID, WE GET PRESSURE
- 28 BECAUSE WE ARE SUB TO NORCAL, SO NORCAL SAY THIS IS WHAT WE

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- 1 WANT YOU TO AGREE TO, AND WE AGREED TO THAT, IF THIS IS WHAT
- 2 NORCAL WAS GOING TO PAY US --
- 3 Q. I UNDERSTAND THAT. WHAT WERE YOU GOING TO TELL THE
- 4 ILWU?
- 5 A. WE NOTIFY ILWU THAT WE GET PRESSURE FROM OUR
- 6 CONTRACTOR NORCAL, AND ALSO THEY SAID THAT THEY GET PRESSURE
- 7 FROM TEAMSTER AND ALSO FROM CITY OF SAN JOSE THAT WE HAVE TO
- 8 USE TEAMSTER IN SAN JOSE.
- 9 Q. AND WOULD THAT BE ROBERTO FLOTTE YOU TOLD THAT TO?
- 10 A. YES.
- 11 Q. WHEN DID YOU TELL HIM THAT?
- 12 A. I DON'T KNOW IF IT'S, EITHER THE SAME DAY BEFORE WE
- 13 SIGN OR -- JUST WITHIN THE -- WE NOTIFY THEM THERE MIGHT BE A
- 14 FIGHT UP TO COUNCIL LEVEL WHERE TEAMSTER WANT TO BE TEAMSTER
- 15 AND WE HAVE COMMITMENT WITH YOU. SO WE WANT YOU TO KNOW THAT
- 16 TEAMSTER WORKING STRONGLY WITH CITY AND WE GOT IN WORDING FROM
- 17 NORCAL THAT THE MAYOR' S OFFICE IS SUPPORTING TEAMSTER AND THEY

18 WANT US TO GO TEAMSTER.

19 SO WE NOTIFY THEM THE SAME DAY, AS SOON AS WE KNOW
20 THIS REQUIRED FROM NORCAL TO US AND SAY THAT THE MAYOR' S
21 OFFICE WANT IT LIKE THAT. WE NOTIFY ILWU.

22 Q. WHAT DID MR. FLOTTE SAY WHEN YOU TOLD HIM THE MAYOR' S
23 OFFICE WANTED YOU TO USE TEAMSTERS? IS THAT WHAT YOU TOLD HIM
24 YOU LEARNED THROUGH NORCAL, THAT THE MAYOR' S OFFICE WANTED YOU
25 TO USE TEAMSTERS?

26 A. YES. I TOLD HIM THAT NORCAL TOLD US THAT THIS IS
27 WHAT WE HAVE TO DO. AND THE MAYOR' S OFFICE PRESSURED THEM AND
28 THEY PRESSURE US THAT WE HAVE TO USE.

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1 Q. WHAT DID MR. FLOTTE SAY?

2 A. HE SAID -- I DON' T RECALL THE WHOLE THING, BUT, YOU
3 KNOW, THERE ARE TWO THINGS HE SAID. HE' S GOING TO TALK TO
4 TEAMSTERS AND HE SAID HE WAS GOING TO TAKE THIS TO NLRB.

5 Q. NATIONAL LABOR RELATIONS BOARD?

6 A. YES. AND, YOU KNOW, WE JUST TELL HIM THIS IS THE
7 LABOR THING. ONE, WE HAVE A CONTRACT WITH NORCAL. THIS IS
8 WHAT THEY WANT US TO DO AND ARE WILLING TO PAY DIFFERENCE. WE
9 AGREE WITH YOU WHENEVER WE EXPAND WE' RE GOING TO USE ILWU, BUT
10 NOW THIS IS A TOUGH FIGHT UP THERE AND WE IN MIDDLE. WE DON' T
11 KNOW HOW WE ARE GOING TO DO IT, SO IT' S BETTER FOR YOU AS
12 LABOR DEALING WITH THE LABOR UNION.

13 Q. SO YOU BASICALLY TOLD HIM TO TRY TO WORK IT OUT WITH
14 THE TEAMSTERS?

15 A. RIGHT.

- 16 Q. NOW, UNDER THE AGREEMENT NORCAL AGREED TO PAY YOU THE
17 DIFFERENCE IN WAGES AND BENEFITS, RIGHT?
- 18 A. YES.
- 19 Q. WHAT DID CWS AGREE TO DO IN THIS ADDENDUM?
- 20 A. WE AGREED WE CAN DO, PAY FOR WHATEVER IT COST FOR THE
21 RATE PAY AND PACKET THAT IS REQUIRED IN THIS CONTRACT.
- 22 Q. WHICH IS THE TEAMSTERS' S WAGES AND BENEFITS?
- 23 A. YES.
- 24 Q. DID YOU, DID CWS AGREE TO DO ANYTHING ELSE?
- 25 A. WE AGREE WE'RE GOING TO NOTIFY THE CITY OF SAN JOSE
26 THAT WE AGREE TO THE TEAMSTER PACKET.
- 27 Q. OKAY AND DID CWS DO THAT?
- 28 A. YES.

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- 1 Q. AND HOW DID YOU NOTIFY THE CITY THAT YOU WERE IN
2 AGREEMENT WITH WHAT NORCAL WAS ASKING?
- 3 A. I THINK IT'S IN WRITING, A LETTER TO THE CITY.
- 4 Q. DO YOU REMEMBER WHO IN THE CITY YOU WROTE TO?
- 5 A. I THINK IT'S TO THE MAYOR, BECAUSE NORCAL WAS SAYING
6 THE MAYOR WANT IT. SO IT'S EITHER GOING TO THE MAYOR OR, I
7 DON'T REMEMBER, BUT GOING TO THE ENVIRONMENTAL SERVICE
8 DEPARTMENT.
- 9 Q. OKAY. WHY DON'T YOU LOOK AT GRAND JURY EXHIBIT 16
10 AND TELL US IF YOU HAVE EVER SEEN THIS DOCUMENT BEFORE.
- 11 A. YES.
- 12 Q. WHAT IS IT?
- 13 A. THIS IS A LETTER TO THE MAYOR, CITY OF SAN JOSE.

- 14 Q. AND IS THAT YOUR SIGNATURE AT THE BOTTOM?
- 15 A. NO. THIS IS MY BROTHER.
- 16 Q. OKAY. OH, VICTOR'S SIGNATURE?
- 17 A. YES, VICTOR DUONG.
- 18 Q. YES. AND DID YOU TALK TO YOUR BROTHER ABOUT SENDING
- 19 THIS LETTER OUT?
- 20 A. YES.
- 21 Q. AND THIS IS A LETTER ADDRESSED TO THE MAYOR?
- 22 A. YES.
- 23 Q. AND WAS THIS A CONTACT -- BY SENDING THIS LETTER OUT,
- 24 WAS THE PURPOSE TO HONOR YOUR OBLIGATION IN THE ADDENDUM TO
- 25 CONTACT THE CITY ABOUT PAYING THE DIFFERENT WAGES AND
- 26 BENEFITS?
- 27 A. YES.
- 28 Q. AND THERE'S A FAX HEADER ON THE TOP. THIS WAS FAXED

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- 1 TO THE MAYOR, WAS IT?
- 2 A. YES. I DON'T KNOW IF WE FAXED IT DIRECTLY TO THE
- 3 MAYOR'S OFFICE OR WE -- OR WE FAXED IT TO NORCAL AND NORCAL
- 4 DELIVERED IT.
- 5 Q. THIS CAME FROM YOUR DESK, RIGHT, ACCORDING TO THE FAX
- 6 HEADER?
- 7 A. YES, THIS IS MY PERSONAL FAX.
- 8 Q. THIS WENT OUT FROM YOUR PERSONAL FAX?
- 9 A. YES.
- 10 Q. IS THAT BECAUSE YOU REVIEWED THE LETTER BEFORE IT
- 11 WENT OUT?

- 12 A. YES.
- 13 Q. IS THERE A REASON THAT THE LETTER WAS SIGNED BY
14 VICTOR AND NOT YOU?
- 15 A. YES.
- 16 Q. WHAT' S THE REASON?
- 17 A. I THINK BY THE TIME THAT THIS LETTER, THAT WE GET
18 READY TO ISSUE IT, I STEP OUT OF THE OFFICE. I WAS NOT IN THE
19 OFFICE OR SOMETHING, NOT AROUND, SO I ASKED VICTOR TO GO AHEAD
20 AND SIGN IT AND SEND IT.
- 21 Q. OKAY. NOW, I THINK YOU' VE TOLD US NOW, AND CORRECT
22 ME IF I' M WRONG, THAT YOUR UNDERSTANDING OF THIS ADDENDUM
23 AGREEMENT WAS THIS WAS IN RESPONSE TO NORCAL TELLING YOU THAT
24 THE MAYOR WANTED CWS TO USE TEAMSTERS, CORRECT?
- 25 A. YES.
- 26 Q. BUT THERE' S NO REFERENCE TO TEAMSTERS IN THE
27 ADDENDUM, IS THERE?
- 28 A. THAT' S CORRECT.

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- 1 Q. WHY IS THAT?
- 2 A. WHY, BECAUSE NORCAL IS ASKING US THAT WE HAVE TO
3 AGREE WITH TEAMSTER PACKET.
- 4 Q. RIGHT.
- 5 A. AND WE AGREE TO PAYING THE TEAMSTER PACKET.
- 6 Q. RIGHT.
- 7 A. BUT WE DO NOT MENTION TEAMSTER IN THERE BECAUSE OUR
8 OBLIGATIONS DEAL WITH ILWU. SO WE AGREED, BUT NOT NECESSARILY
9 THAT WE AGREE THAT WE' RE GOING TO HAVE TEAMSTER.

10 Q. RIGHT. BUT AS A PRACTICAL MATTER YOU COULDN'T PAY
11 ILWU WORKERS IN SAN JOSE 40 PERCENT HIGHER WAGES AND NOT
12 INCREASE THE WAGES IN OAKLAND, COULD YOU?

13 A. CAN YOU ASK QUESTION AGAIN?

14 Q. YOU USED LONGSHOREMEN IN OAKLAND, RIGHT?

15 A. YES.

16 Q. EVEN THOUGH THE TEAMSTERS ARE NOT REFERENCED BY NAME,
17 AS A PRACTICAL MATTER YOU COULDN'T USE THE ILWU IN SAN JOSE
18 AND PAY THEM TEAMSTER WAGES, RIGHT?

19 A. YES.

20 Q. BECAUSE THE ILWU WOULD SAY, LOOK, IF YOU'RE PAYING
21 THE WAGES IN SAN JOSE YOU HAVE TO HAVE PAY IT IN OAKLAND TOO,
22 RIGHT?

23 A. YES.

24 Q. THE ONLY WAY YOU CAN ACCOMPLISH THE PAYMENT OF THE 40
25 PERCENT HIGHER WAGES AND BENEFITS TO SAN JOSE WAS BY USING THE
26 TEAMSTERS, RIGHT?

27 A. YES.

28 Q. AND THE REASON THERE IS NO REFERENCE TO TEAMSTERS IS

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1 BECAUSE YOU WERE CONCERNED ABOUT, A, YOUR COMMITMENT TO THE
2 ILWU TO USE THEM IN SAN JOSE, RIGHT?

3 A. YES.

4 Q. AND B, BECAUSE YOU HAD SOME CONCERNS ABOUT THE
5 LEGALITY OF SELECTING A DIFFERENT UNION UNDER THESE
6 CIRCUMSTANCES, RIGHT?

7 A. YES.

- 8 Q. NOW, DID YOU GO TO THE TUESDAY COUNCIL MEETING ON
9 OCTOBER 10 WHEN THEY TOOK THE FIRST VOTE?
10 A. YES, I THINK SO.
11 Q. OKAY. AND DO YOU REMEMBER WHAT HAPPENED AT THAT
12 COUNCIL MEETING?
13 A. NO, I DON'T REMEMBER.
14 Q. DO YOU REMEMBER THAT THERE WAS GOING TO BE A SECOND
15 VOTE IN DECEMBER TO MAKE THE FINAL SELECTION OF THE CONTRACT?
16 A. I REMEMBER IN THE MEETING SOMETHING BEING DISCUSSED
17 AND IS GOING BACK FOR --
18 Q. A SECOND REVIEW?
19 A. YES.
20 Q. DO YOU REMEMBER THAT THE COUNCIL REFERRED THE
21 PROPOSALS TO THE CITY AUDITOR'S OFFICE TO LOOK AT THE
22 FEASIBILITY OF THE PROPOSALS? DOES THAT RING A BELL?
23 A. NO, I DON'T REMEMBER THAT.
24 Q. DO YOU REMEMBER THAT THE CITY DID NOT MAKE A FINAL
25 SELECTION ON OCTOBER 10, IT HAD TO GO BACK FOR A SECOND
26 REVIEW?
27 A. YES.
28 Q. AND WHAT HAPPENED BETWEEN -- AND YOU REMEMBER THE

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- 1 SECOND VOTE WAS ON DECEMBER 12, 2000?
2 A. YES.
3 Q. AND DID YOU HAVE CONTACT WITH THE TEAMSTERS BETWEEN
4 THE FIRST CITY VOTE AND THE SECOND CITY VOTE?
5 A. YES.

- 6 Q. AND WHO FROM THE TEAMSTERS DID YOU HAVE CONTACT WITH?
- 7 A. BOB MORALES.
- 8 Q. AND WHAT DID MR. MORALES WANT CWS TO DO?
- 9 A. HE WANT US TO AGREE TO USE THE TEAMSTER AS OUR
- 10 REPRESENTATIVE IN SAN JOSE.
- 11 Q. RIGHT. DID HE WANT YOU TO SIGN A NEUTRALITY AND A
- 12 CARD CHECK AGREEMENT?
- 13 A. YES.
- 14 Q. AND HOW SOON AFTER THE FIRST COUNCIL MEETING ON
- 15 OCTOBER 10 DID MR. MORALES START TALKING TO YOU ABOUT THIS?
- 16 A. I THINK IT'S RIGHT AWAY ON THAT DAY, OR THE NEXT DAY
- 17 BEFORE THE NEXT VOTE ON THE COUNCIL.
- 18 Q. I'M NOT CLEAR ON YOUR ANSWER. WHEN YOU SAY THAT DAY
- 19 OR BEFORE THE NEXT DAY, WE KNOW THAT THE FIRST COUNCIL VOTE
- 20 WAS TUESDAY, OCTOBER 10, 2000. THE SECOND AND FINAL VOTE WAS
- 21 TUESDAY, DECEMBER 12, 2000, TWO MONTHS LATER.
- 22 ARE YOU SUGGESTING THAT MR. MORALES JUST DID NOTHING
- 23 FOR TWO MONTHS UNTIL THE DAY BEFORE THE SECOND VOTE?
- 24 A. NO. WHEN YOU SAY DO ANYTHING AS BEING GET READY TO
- 25 CLOSE THE VOTE, I THINK THAT HE WAS TRYING TO PRESSURE US THAT
- 26 WE HAVE TO AGREE TO USE TEAMSTER. ALL THE TIME IT IS WE HAVE
- 27 TO AGREE IN ADVANCE THAT WE'RE GOING USE TEAMSTER.
- 28 Q. BY THE WAY, LET'S GO BACK TO THE ADDENDUM FOR A

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- 1 SECOND -- STRIKE THAT. FORGET ABOUT THE ADDENDUM.
- 2 HOW MANY TIMES BETWEEN THE FIRST AND SECOND CITY
- 3 COUNCIL VOTES DO YOU THINK YOU TALKED TO BOB MORALES ABOUT

4 SIGNING A NEUTRALITY AND CARD CHECK AGREEMENT?
5 A. I THINK IT HAVE TO BE TWO TO THREE TIMES.
6 Q. OKAY. AND WHEN HE FIRST TALKED TO YOU ABOUT IT, WHAT
7 DID YOU TELL HIM?
8 A. WE CAN'T AGREE TO THIS.
9 Q. WHY DID YOU TELL HIM THAT?
10 A. WELL, I TOLD HIM BECAUSE WE HAVE AGREEMENT WITH
11 NORCAL WE PAY FOR THE DIFFERENCE BUT WE DO NOT HAVE AGREEMENT
12 THAT WE HAVE TO USE TEAMSTER BECAUSE WE CANNOT AGREE TO
13 SOMETHING THAT WOULD JEOPARDIZE OUR RELATIONSHIP WITH ILWU.
14 AND ALSO BECAUSE THE EMPLOYEE THAT HAVE A RIGHT TO
15 VOTE WHICHEVER THE UNION THAT THEY WANT. SO WE ARE WAITING
16 THE AGREEMENT, THAT'S WHAT THE PAY RATE AND EMPLOYEE GET, THE
17 PACKET.
18 Q. SO LET ME ASK YOU THIS: ARE YOU SAYING THAT YOU
19 TRIED TO GET MR. MORALES TO AGREE THAT YOU COULD PAY THE
20 HIGHER WAGES AND BENEFITS WITHOUT DECIDING WHICH UNION WAS
21 GOING TO REPRESENT THEM? IS THAT WHAT YOU WERE TRYING TO
22 CONVEY TO MR. MORALES?
23 A. THAT'S TRUE. WE AGREED TO THE PACKET.
24 Q. SORRY?
25 A. WE AGREED TO THE PACKET.
26 Q. THE WAGES AND BENEFITS PACKET?
27 A. YES. AND THIS IS WHAT I EXPLAINED TO HIM. I SAID
28 WHY DO YOU WORRY ABOUT EMPLOYEE NOT GOING TO BE TEAMSTERS,

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1 SINCE WE'RE GOING TO HIRE ALL OF THEM, THEY ARE GOING TO GET

2 THE SAME PACKET THEY ARE GETTING NOW. THEY ARE GOING TO WORK
3 FOR US AUTOMATICALLY, THEY ARE GOING TO BE EVEN. WHY DO WE
4 HAVE TO SIGN SOMETHING SAYING WE AGREE?

5 Q. IN OTHER WORDS, DID I HEAR YOU SAY THAT YOU TOLD
6 MR. MORALES YOU'RE GOING TO GET, THEY ARE GOING TO GET THE
7 TEAMSTER WAGE AND BENEFIT PACKAGES, THEY ARE GOING TO BE
8 TEAMSTERS, WHY DO WE HAVE TO SIGN SOMETHING? IS THAT WHAT YOU
9 TOLD HIM, OR DID YOU TELL HIM --

10 A. YEAH.

11 Q. OR DID YOU TELL HIM THEY ARE GOING TO GET THE SAME
12 WAGES AND BENEFITS AS THE TEAMSTERS NOW GET, WHY DO THEY HAVE
13 TO BE TEAMSTERS? IS THAT WHAT YOU TOLD THEM, OR WAS IT
14 SOMETHING ELSE?

15 A. I TOLD THEM, I TOLD MORALES, I SAID, "DON'T WORRY,
16 BECAUSE ALL EMPLOYEES, I AGREE TO ALL EMPLOYEES GOING TO GET
17 THE RATE PAY AND THE BENEFIT PACKET CURRENTLY WHAT THEY GET,
18 WHICH IS TEAMSTER, AND THEY AUTOMATICALLY REPLACE WORKER AT MY
19 FACILITY IF WE GET THE CONTRACT. THEY ARE TEAMSTER MEMBERS,
20 SO AUTOMATICALLY THEY ARE GOING TO VOTE WITH TEAMSTER ANYWAY,
21 SO WHY DO YOU PUSH ME INTO SIGN THIS?"

22 Q. YOU TOLD THEM THEY ARE GOING TO GET HIGHER WAGES AND
23 BENEFITS AND THEY ARE GOING TO PROBABLY VOTE TO BE TEAMSTERS,
24 SO WHY DO I HAVE TO SIGN THIS AGREEMENT, IS THAT WHAT YOU
25 SAID?

26 A. RIGHT. THE REASON WHY WE DO THAT BECAUSE, YES, WE
27 AGREE TO THE PACKET THAT WE PAYING FOR, BUT WHAT THAT PACKET
28 GOING TO BE. AND NOT JUST THE RATE AND BENEFIT PACKET,

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1 THERE' S LOTS OF THINGS GOING TO GO INTO THE LABOR CONTRACT.

2 I DO NOT WANT TO AGREE TO MAKE HIM FEEL WHATEVER HE
3 WANT WE AGREE, BECAUSE WE ONLY AGREE WITH NORCAL ON THE TWO
4 ITEMS.

5 Q. WAGES AND BENEFITS?

6 A. RIGHT. THE REST WILL BE MANAGEMENT RIGHTS, WORK
7 RULES, EVERYTHING IS UP TO NEGOTIATION. THAT' S WHY I DO NOT
8 PUT MYSELF INTO SAYING WE AGREE WITH YOU ANY WAY.

9 Q. WHAT YOU' RE SAYING IS YOU AGREED WITH NORCAL TO PAY
10 THE TEAMSTER WAGES AND BENEFITS, BUT THERE' S MORE ISSUES
11 BESIDES WAGES AND BENEFITS IN A COLLECTIVE BARGAINING
12 AGREEMENT?

13 A. YES.

14 Q. THERE' S MANAGEMENT RIGHTS, SENIORITY, SO FORTH?

15 A. YES.

16 Q. SO THAT' S WHY YOU DIDN' T WANT TO SIGN THAT NEUTRALITY
17 AGREEMENT; IS THAT CORRECT?

18 A. YES.

19 Q. SO WHAT DID MR. MORALES SAY?

20 A. HE SAID, I' M GOING TO TALK TO NORCAL, AND YOU' RE
21 GOING TO SIGN ANYWAY. I REMEMBER HE GET VERY MAD.

22 Q. WHAT DID YOU MAKE OF THAT WHEN HE SAID, I' M GOING TO
23 TALK TO NORCAL AND YOU' RE GOING TO SIGN ANYWAY?

24 A. I SAID, THEN TALK TO NORCAL.

25 Q. WAS THERE SOME REASON BESIDES ECONOMIC THAT YOU
26 PREFERRED TO DEAL WITH THE LONGSHOREMEN RATHER THAN THE
27 TEAMSTERS?

28 A. YES. I WOULD SAY THAT' S THE LONGSHOREMEN PEOPLE

1 UNDERSTANDING THE BUSINESS. THEY WORK CLOSELY WITH ILWU AS
2 OWNER AND THEY SHARE THE HARDSHIP, HOW ARE YOU GOING TO GET
3 NEW BUSINESS. IT'S HARD TO GO OUT AND GET NEW BUSINESS. THEY
4 FEEL THAT WE TREAT THE MEMBERS FAIR, THEY GET THE FAIR RATE,
5 FAIR BENEFIT. AND ESPECIALLY THEY FEEL THAT WE ALWAYS CREATE
6 JOBS FOR THEM.

7 Q. HOW WOULD YOU COMPARE THAT WITH YOUR IMPRESSION OF
8 THE TEAMSTERS?

9 A. EVERY TIME WE TALK TO EMPLOYEE -- YOU CAN'T TALK TO
10 THE EMPLOYEE, YOU HAVE TO TALK WITH THE -- YOU KNOW, EMPLOYEE
11 DO SOME WORK AND WE SAY THIS IS NOT THE RIGHT THING, YOU CAN'T
12 DO THIS, THEY SAY, HEY, WE'RE TEAMSTER. AND EVERY TIME WE TRY
13 TO, IT'S JUST HARD, VERY HARD FOR US TO WORK WITH TEAMSTER
14 BECAUSE BOB IS THE DEMANDING GUY. HE WON'T LISTEN TO YOU AT
15 ALL; ALL HE KNOWS IS HIM. THAT'S VERY HARD FOR US TO WORK
16 WITH HIM.

17 Q. ARE YOU SAYING YOU WERE CONCERNED IT WOULD BE MORE
18 DIFFICULT TO WORK WITH THE TEAMSTERS AS OPPOSED TO
19 LONGSHOREMEN?

20 A. YES.

21 Q. AND PERHAPS THE TEAMSTERS WERE MORE INDEPENDENT IN
22 THEIR ATTITUDE TOWARDS MANAGEMENT?

23 A. (NO RESPONSE.)

24 Q. HOW WOULD YOU DESCRIBE THE DIFFERENCE?

25 A. THE DIFFERENCE IS ON THE MANAGEMENT SIDE. IF
26 ANYTHING NEEDS TO BE WORKED OUT, WE ALWAYS SIT DOWN WITH ILWU
27 AND WORK IT OUT. WHATEVER YOUR PROBLEM, WE SOLVE THE PROBLEM
28 AND THAT BENEFITS BOTH IT'S A FAIR WAY.

1 ON THE TEAMSTER SIDE, IT'S ALL THE WAY LIKE THEIR
2 WAY. THIS IS WHAT WE WANT, AND THAT'S VERY HARD TO SIT DOWN,
3 AND IT'S JUST DIFFERENT.

4 Q. ARE YOU SAYING THE TEAMSTERS, YOUR PERCEPTION WAS THE
5 TEAMSTERS WERE MORE DEMANDING AND LESS WILLING TO COMPROMISE?

6 A. THAT'S PARTLY TRUE.

7 Q. SO YOUR PREFERENCE WOULD HAVE BEEN TO STAY WITH THE
8 LONGSHOREMEN, RIGHT?

9 A. YES.

10 Q. THAT'S HOW YOU BID THIS JOB, RIGHT?

11 A. YES.

12 Q. AND THAT'S WHAT YOU TOLD THE MAYOR ON OCTOBER 4,
13 2000, RIGHT?

14 A. YES.

15 Q. YET SOMEHOW ON DECEMBER 11, 2000 YOU SIGNED A
16 NEUTRALITY AGREEMENT WITH THE TEAMSTERS, RIGHT?

17 A. YES.

18 Q. WHY DON'T YOU TAKE A LOOK AT EXHIBIT 68 AND TELL US
19 IF YOU'VE SEEN THIS DOCUMENT BEFORE.

20 A. YES.

21 Q. WHAT IS THIS EXHIBIT, WHAT IS EXHIBIT 68?

22 A. CARD CHECK AND NEUTRALITY AGREEMENT BETWEEN
23 CALIFORNIA WASTE SOLUTIONS AND TEAMSTER LOCAL 350.

24 Q. AND IF YOU LOOK AT THE LAST PAGE OF THE DOCUMENT
25 UNDER NEEDS, THE WORDS CALIFORNIA WASTE SOLUTIONS, IS THAT
26 YOUR SIGNATURE?

27 A. YES.

28 Q. DID YOU SIGN IT ON DECEMBER 11, 2000?

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1 A. YES.

2 Q. AND THAT WAS THE DAY BEFORE THE SECOND AND FINAL VOTE
3 ON THE CONTRACT?

4 A. YES.

5 Q. AND CAN YOU TELL US HOW IT IS YOU CAME TO SIGN THIS
6 AGREEMENT WITH THE TEAMSTERS THAT YOU DIDN' T, THE SAME UNION
7 YOU DIDN' T PREFER TO WORK WITH?

8 A. I GET PRESSURE FROM NORCAL, THEY GET READY FOR THE
9 CITY COUNCIL TO VOTE FOR THEM, TO GET CONTRACT. AND ONE THING
10 THEY SAID IS THEY WOULD NOT GET THE VOTE BECAUSE OF THE
11 TEAMSTER, THAT I HAVE TO SIGN IT BEFORE IT GET THE VOTE OR
12 ELSE THEY CANNOT GET THE VOTE, THEY WILL LOSE THE CONTRACT.

13 THEY SAY THIS HAVE TO BE SIGNED BECAUSE THE MAYOR
14 WANTS YOU TO SIGN IT.

15 Q. AND WHO AT NORCAL TOLD YOU THAT?

16 A. SANGI ACOMO.

17 Q. WHAT ABOUT BILL JONES, DID HE SAY ANYTHING ALONG
18 THOSE LINES TOO?

19 A. ALL THE WORK THAT I DO, MOST OF IT IS WITH
20 SANGI ACOMO. BECAUSE CONTRACT I SIGNED, THE ORIGINAL ACCOUNT
21 WITH SANGI ACOMO. AND THIS IS BILL JONES PRESSURING US AND I
22 DID NOT AGREE TO IT. AND THEY GO TO SANGI ACOMO AND SANGI ACOMO
23 PRESSURE ME.

24 Q. DID YOU JUST TESTIFY THAT INITIALLY IT WAS BILL JONES
25 PRESSURING YOU TO SIGN THE NEUTRALITY AGREEMENT WITH THE

26 TEAMSTERS?

27 A. YES, HE TRY.

28 Q. AND ON MORE THAN ONE OCCASION?

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1 A. YES.

2 Q. AND YOU RESISTED BILL JONES' S PRESSURE, RIGHT?

3 A. YES.

4 Q. BUT HE DEFINITELY WAS PRESSURING YOU TO GO WITH THE
5 TEAMSTERS, RIGHT?

6 A. YES.

7 Q. NO DOUBT ABOUT THAT, IS THERE?

8 A. NO.

9 Q. AND ULTIMATELY THAT WAS UNSUCCESSFUL, SO SANGIACOMO
10 CONTACTED YOU, RIGHT?

11 A. YES.

12 Q. I HAVE A NEW EXHIBIT I'M GOING TO MARK AS 77. IT'S A
13 FIVE-PAGE FAX FROM BILL JONES TO DAVID DUONG, DATED DECEMBER
14 11, 2000.

15 THE FOREMAN: SO MARKED.

16 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
17 JURY EXHIBIT 77.)

18 BY MR. FINKELSTEIN:

19 Q. TAKE A LOOK AT 77 AND TELL US IF YOU'VE SEEN THIS
20 DOCUMENT BEFORE.

21 A. YES.

22 Q. AND WHAT IS THIS DOCUMENT?

23 A. IT'S THE FAX COVER PAGE WITH ATTACHMENT ON CARD CHECK

24 AND NEUTRALITY AGREEMENT BETWEEN CALIFORNIA WASTE SOLUTIONS
25 AND TEAMSTER 350.

26 Q. APPARENTLY THE NEUTRALITY AGREEMENT WITH THE
27 TEAMSTERS WAS FAXED TO YOU BY BILL'S OFFICE FOR YOUR
28 SIGNATURE; IS THAT HOW IT WORKED?

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1 A. YES.

2 Q. YOU WROTE SOME NOTES ON THE COVER PAGE OF THE FAX; IS
3 THAT CORRECT?

4 A. YES.

5 Q. THAT'S YOUR WRITING?

6 A. YES.

7 Q. AND WHEN DID YOU WRITE THOSE NOTES?

8 A. AT 2:00 P.M. ON DECEMBER 11, 2000.

9 Q. DID YOU HAVE A CONVERSATION WITH MIKE SANGIACOMO THAT
10 DAY?

11 A. YES.

12 Q. AND WHY DID YOU WRITE THESE NOTES ABOUT YOUR
13 CONVERSATION WITH MIKE SANGIACOMO ON THE COVER PAGE TO THIS
14 FAX THAT DAY?

15 A. FOR MY OWN MEMORY WHAT IS WE AGREE ON, WHAT IT'S ALL
16 ABOUT.

17 Q. YOU WROTE TO DOCUMENT YOUR PHONE CALL WITH
18 MR. SANGIACOMO?

19 A. YES.

20 Q. TO RECORD WHAT HAD HAPPENED IN THE PHONE CALL?

21 A. NO.

22 Q. I DON'T MEAN DID YOU MAKE A TAPE RECORDING, YOU WROTE
23 THIS NOTE TO MAKE A RECORD OF WHAT WAS SAID IN THE PHONE CALL?

24 A. YES.

25 Q. AND YOU DID THIS THE SAME DAY AS THE PHONE CALL,
26 RIGHT?

27 A. YES.

28 Q. HOW SOON AFTER THE PHONE CALL DID YOU MAKE THESE

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1 NOTES?

2 A. UH -- JUST RIGHT AFTER THE PHONE CALL, WITHIN AN
3 HOUR.

4 Q. AND AT THAT TIME, WAS THE PHONE CALL FRESH IN YOUR
5 MEMORY?

6 A. (NO RESPONSE.)

7 Q. WHEN YOU MADE THE NOTES, WAS WHAT WAS SAID IN THE
8 CALL FRESH IN YOUR MEMORY OR FRESH IN YOUR MIND?

9 A. YES.

10 Q. YES?

11 A. DO YOU MEAN I REMEMBER EVERYTHING I WROTE?

12 Q. YES.

13 A. YES.

14 Q. DID YOU BELIEVE YOUR NOTES TO BE A TRUE AND ACCURATE
15 STATEMENT OF WHAT WAS SAID IN THE PHONE CALL?

16 A. YES.

17 Q. OKAY. AND SO IN YOUR PHONE CALL WITH MR. SANGIACOMO,
18 HE ASKED YOU TO SIGN THIS NEUTRALITY AGREEMENT; IS THAT
19 CORRECT?

20 A. YES.

21 Q. HE ASKED YOU TO FAX IT OUT THAT SAME DAY, RIGHT?

22 A. YES.

23 Q. AND HE SAID THE REASON FOR DOING THAT WAS SO NORCAL
24 COULD GET THE CONTRACT, RIGHT?

25 A. YES.

26 Q. SO NORCAL COULD GET THE CONTRACT APPROVED BY THE CITY
27 OF SAN JOSE TOMORROW AT THE 1:30 P.M. COUNCIL MEETING, RIGHT?

28 A. YES.

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1 Q. WAS THERE ALSO SOME DISCUSSION ABOUT MR. SANGIACOMO
2 AND NORCAL HELPING YOU WITH THE TEAMSTERS IN CONNECTION WITH
3 RECYCLABLE MATERIALS OUTSIDE THE CITY OF SAN JOSE?

4 A. YES.

5 Q. WHAT WAS THAT ALL ABOUT? CAN YOU TELL US ABOUT THAT?

6 A. WHEN NORCAL ASKED US TO SIGN THIS, WE HAVE A CONCERN
7 THAT WE HAD AN AGREEMENT THAT NORCAL COVER FOR, PAY FOR THE
8 DIFFERENCE FOR THE RATE AND BENEFIT PACKET IN SAN JOSE AND FOR
9 THE SAN JOSE CONTRACT.

10 Q. RIGHT.

11 A. BUT WE SIGNING THIS MEANS WE AGREE IT WOULD BE THE
12 WHOLE PLAN, AND OUR PLAN EXPECTING WHAT WE'RE GOING TO GET OUT
13 OF IT TOO FROM NORCAL, FROM THE SEVEN CITIES IN SANTA CLARA
14 COUNTY THAT NORCAL SUPPOSED TO BE GIVING TO US.

15 Q. YOU HAVE TWO KINDS OF MATERIAL, YOU WERE DEALING WITH
16 MATERIAL RECYCLABLES FROM THE CITY OF SAN JOSE?

17 A. YES.

18 Q. RECYCLABLES FROM OUTSIDE THE CITY OF SAN JOSE FROM
19 OTHER CITIES IN THE COUNTY, RIGHT?

20 A. YES.

21 Q. WHAT WERE YOU EXPECTING YOUR ARRANGEMENT TO BE WITH
22 REGARD TO HOW YOU WERE GOING TO HANDLE THE NON-SAN JOSE
23 MATERIALS?

24 A. WELL, WE DISCUSS ABOUT THE MATERIAL THAT MIKE, THIS
25 IS WHAT THE COST IS FOR SAN JOSE MATERIAL, BUT WE'RE GOING TO
26 HAVE THE OTHER MATERIAL, NON-SAN JOSE MATERIAL TO PROCESS
27 THERE. IF WE SIGN, THIS MEAN WE AGREE TO PAY FOR THE SAME
28 RATE FOR THE OTHER MATERIAL THAT WE HAVE TO PROCESS, SO WE

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1 NEED YOU TO COVER THIS TOO.

2 Q. WHAT DID MIKE SAY TO THAT?

3 A. HE SAID, NO, WE CANNOT COVER THAT, BECAUSE I ONLY GET
4 THE PROMISE FROM THE MAYOR TO PAY FOR THE SAN JOSE, NOT FOR
5 THE OTHER.

6 Q. OKAY, SO HOW DID YOU RESOLVE THAT ISSUE WITH MIKE
7 SANGIACOMO?

8 A. SO WE AGREED THAT, ONE, HE WAS GOING TO ALLOW US, HE
9 GOING TO TALK TO TEAMSTER, THAT IF WE CAN GET A BREAK ON THE
10 RATE FOR PROCESSING THE SANTA CLARA MATERIAL OR NON-SAN JOSE
11 MATERIAL.

12 Q. THAT'S WHAT YOU CALL THE SANTA CLARA MATERIAL?

13 A. RIGHT. TWO, THEY WILL ALLOW US, NORCAL WILL ALLOW US
14 TO PROCESS THE SANTA CLARA MATERIAL SOMEWHERE ELSE, NOT IN THE
15 SAME FACILITY THAT WE HAVE.

16 THREE, NORCAL GOING TO, IF WE CANNOT TAKE THAT
17 MATERIAL AWAY FROM THE SAN JOSE PLANT BECAUSE OF TEAMSTER
18 FIGHTING AND WANTING US TO KEEP THE MATERIAL PROCESS AT THE
19 SAME SITE, NORCAL IS GOING TO EITHER GIVE US MORE BUSINESS SO
20 WE CAN MAKE MONEY TO SUBSIDIZE FOR THE DIFFERENCE, OR EVEN
21 NORCAL GOING TO REDUCE THEIR PRICING THAT THEY SELL THE
22 MATERIAL TO US, REDUCE IT SO WE CAN USE THAT PROFIT TO COVER
23 FOR THE DIFFERENCE.

24 Q. DID YOU ATTEND THE COUNCIL MEETING THE NEXT DAY ON
25 DECEMBER 12?

26 A. I DON'T RECALL. PROBABLY I DID.

27 Q. IN ANY EVENT, NORCAL GOT THE CONTRACT, RIGHT?

28 A. YES.

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1 Q. AND UNDER THE TERMS OF THE CONTRACT NORCAL AND CWS
2 WERE NOT SUPPOSED TO START OPERATIONS UNTIL JULY 1 OF '02,
3 CORRECT?

4 A. YES.

5 Q. SO WHEN DID CWS'S RECYCLING OPERATION IN SAN JOSE
6 BECOME OPERATIONAL?

7 A. WE OPERATED SOMETIME IN AUGUST, 2002. THAT'S WHAT
8 THE CONTRACT SAYS.

9 Q. THE CONTRACT REQUIRED CWS AND NORCAL TO START
10 OPERATIONS JULY 1, 2002. SO MY QUESTION IS, WHEN DID YOU
11 ACTUALLY START YOUR OPERATION?

12 A. WE HAVE THE MACHINE THAT WE TESTING RUNNING IN AUGUST
13 2002.

14 Q. WHEN DID YOU ACTUALLY START PROCESSING RECYCLABLES IN
15 SAN JOSE?

16 A. IN OCTOBER.

17 Q. OCTOBER 2002?

18 A. YES.

19 Q. AND WHY IS IT YOU DIDN'T, WERE NOT ABLE TO START
20 PROCESSING THE RECYCLABLES ON JULY 1?

21 A. BECAUSE OF CONSTRUCTION THAT'S GOING ON. IT JUST
22 DELAYING US TO GET THE SITE UP ON TIME.

23 Q. WELL, ACTUALLY, IN YOUR PROPOSAL THE SITE THAT YOU
24 INITIALLY PROPOSED TO THE CITY FOR YOUR OPERATION WAS ON BURKE
25 STREET, RIGHT?

26 A. CORRECT.

27 Q. DIDN'T YOU HAVE SOME PROBLEMS GETTING THE BURKE
28 STREET FACILITY PERMITTED TO MEET YOUR NEEDS?

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1 A. YES, CORRECT.

2 Q. OKAY. SO DID THAT CAUSE SOME DELAY SO YOU HAD TO GET
3 A SECOND SITE?

4 A. THAT'S TRUE.

5 Q. A DIFFERENT SITE, I SHOULD SAY.

6 A. YES.

7 Q. ULTIMATELY YOU WOUND UP ON TIMOTHY DRIVE, RIGHT?

8 A. YES.

9 Q. AND IS THAT THE REASON YOU DIDN'T START PROCESSING
10 THE SAN JOSE RECYCLABLES ON JULY 1, '02, OR WERE THERE OTHER
11 PROBLEMS?

12 A. NO, THAT'S THE MAIN THING IS WE COULDN'T GET THE
13 PERMIT ON BURKE STREET AND WE ENDED UP WE HAD TO LOOK FOR THE
14 SITE IN THE RIGHT ZONE AND ALL THAT. IT TAKES TIME FOR US TO
15 DO THAT.

16 Q. OKAY. WELL, HOW DID YOU SELECT THE BURKE STREET SITE
17 FOR YOUR PROPOSAL?

18 A. WHEN NORCAL SUBMITTED THEIR BID THEY DEMAND US THAT
19 WE HAVE TO HAVE THE ADDRESS FOR PROCESSING SO THEY CANNOT
20 SUBMIT IT WITHOUT THE ADDRESS IN SAN JOSE.

21 Q. IN OTHER WORDS, NORCAL TOLD YOU THAT THEY HAD TO
22 SUBMIT IN THEIR PROPOSAL THE ADDRESS IN SAN JOSE WHERE CWS' S
23 RECYCLABLE FACILITY WOULD BE LOCATED, CORRECT?

24 A. YES.

25 Q. SO YOU HAD TO PICK AN ADDRESS, RIGHT?

26 A. WE HAVE TO PICK AN ADDRESS WHERE WE CAN SUBMIT IT.

27 Q. HOW DID YOU FIND THE BURKE STREET ADDRESS?

28 A. WE FIND IT BY ONE OF THE REAL ESTATE AGENTS.

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1 Q. WHO?

2 A. HIS VIETNAMESE NAME IS T-I-U-N-G AND Q-U-A-N-G.

3 Q. DID YOU USE ANY OTHER CONSULTANTS TO HELP YOU SELECT
4 THE RIGHT ADDRESS?

5 A. OKAY --

6 Q. I'M TRYING TO UNDERSTAND HOW YOU WOUND UP SELECTING
7 AN ADDRESS THAT YOU COULDN'T GET A PERMIT FOR.

8 A. WHEN WE GET ADDRESS, THAT IS THE AGENT WE USE. AND
9 WE MET WITH THE AGENT REPRESENTATIVE ON THE SELLER'S SIDE

10 WHICH IS -- HE'S FAMOUS HERE, I'M TRYING TO REMEMBER HIS NAME,
11 BUT NORCAL GIVE US THE ADDRESS TO NORCAL. IT WAS A DEMOLITION
12 CONSTRUCTION, RECYCLING PLANT.

13 Q. IT WAS A WHAT?

14 A. DEMOLITION CONSTRUCTION RECYCLING PLANT. SO --

15 Q. YOU ASSUMED THAT WOULD BE AN APPROPRIATE SITE, GIVEN
16 THE NATURE OF THE BUSINESS THAT WAS ALREADY THERE, IS THAT
17 WHAT YOU'RE SAYING?

18 A. WE CHECKED WITH THE CITY PLANNING, WITH THE CITY.
19 AND WE GIVE THE ADDRESS TO NORCAL AND NORCAL CHECK WITH ESD IT
20 WAS A GOOD ADDRESS AND GOOD SITE.

21 Q. SO HOW DID IT HAPPEN THAT WHEN YOU DID ALL THIS
22 CHECKING, IT LOOKED LIKE A GOOD ADDRESS, YET SOMEHOW IT DIDN'T
23 WORK OUT FOR YOU. WHY IS THAT?

24 A. NORCAL ACTUALLY REQUESTED US WE HAVE TO CLOSE THE
25 ESCROW RIGHT AWAY SO WE HAVE TO SHOW THAT WE OWN IT TO BE
26 PRESENT IN SAN JOSE WHEN WE DONE ALL THAT. AFTER THE AWARD OF
27 THE CONTRACT WE TRIED TO APPLY FOR CONSTRUCTION --

28 Q. CONDITIONAL USE PERMIT?

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1 A. YES.

2 Q. C-U-P?

3 A. YES. AND THEN THE CUP SAID WITH THE AMOUNT OF
4 MATERIAL YOU'RE GOING TO DO, NORCAL IS GOING TO DIRECT TO US,
5 WITH THE AMOUNT OF TRUCKS GOING IN AND OUT OF THAT SITE, IT'S
6 VERY TIGHT, SO THEY SAID NOT FEASIBLE.

7 Q. THE CITY DIDN'T LIKE THE AMOUNT OF TRAFFIC THAT WOULD

- 8 BE GENERATED BY THAT USE AT THAT SITE, IS THAT WHAT YOU'RE
9 SAYING?
- 10 A. YES.
- 11 Q. SO HOW DID YOU FIND THE TIMOTHY DRIVE SITE?
- 12 A. WE HAVE DIFFERENT CONSULTANT.
- 13 Q. WHO?
- 14 A. THAT'S SEAN KALI-RAI.
- 15 Q. WHO IS MR. KALI-RAI'S ASSOCIATE, DO YOU REMEMBER HIS
16 NAME?
- 17 A. YES. TONY ARREOLA.
- 18 Q. MR. ARREOLA HAPPENS TO BE A REAL ESTATE AGENT; ISN'T
19 THAT TRUE?
- 20 A. THAT I DON'T KNOW, BUT HE WORKED WITH SEAN, AND SEAN
21 CLAIMED HE'S --
- 22 Q. SEAN IS A REAL ESTATE AGENT?
- 23 A. YES.
- 24 Q. THEY HELPED YOU FIND THE TIMOTHY DRIVE SITE?
- 25 A. YES.
- 26 Q. HOW MUCH COMMISSION DID THEY MAKE ON THAT DEAL?
- 27 A. I RECALL LIKE SIX PERCENT.
- 28 Q. WHAT WAS THE PURCHASE PRICE?

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- 1 A. I THINK IT'S LIKE, I DON'T KNOW IF IT'S \$4.6 MILLION
2 OR \$6 MILLION.
- 3 Q. SO THEIR COMMISSION WAS SEVERAL HUNDRED THOUSAND
4 DOLLARS ON THIS?
- 5 A. YES.

- 6 Q. WAS THAT ON TOP OF ANY CONSULTANT FEE YOU PAID THEM
7 TO FIND THE SITE?
8 A. YES.
9 Q. HOW MUCH CONSULTING FEE DID YOU PAY THEM?
10 A. I DON'T REMEMBER, BUT I --
11 Q. DO YOU HAVE A WRITTEN AGREEMENT WITH THEM?
12 A. YES.
13 Q. AND YOU HIRED THEM TO HELP YOU GET THE PROPER
14 APPROVALS FROM THE CITY FOR THIS TIMOTHY DRIVE SITE?
15 A. YES.
16 Q. AND YOU GOT THE PROPER APPROVALS FROM THE CITY,
17 RIGHT?
18 A. YES.
19 Q. NOW, YOU STARTED HIRING PEOPLE NO LATER THAN JULY
20 1, '02 AT YOUR SAN JOSE FACILITY, RIGHT?
21 A. YES.
22 Q. YOU STARTED ACCEPTING RECYCLABLES YOU TOLD US IN
23 OCTOBER OF '02, RIGHT?
24 A. YES.
25 Q. AND YOU WERE PAYING THESE HIGHER WAGES AND BENEFITS,
26 RIGHT?
27 A. YES.
28 Q. SO WHEN DID NORCAL FIRST START PAYING YOU THE

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- 1 REIMBURSEMENT FOR THESE EXTRA WAGES AND BENEFITS?
2 A. OH --
3 Q. DID THEY START PAYING ON JULY 1, '02?

4 A. NO.

5 Q. DID THEY START TO PAY IN OCTOBER '02?

6 A. NO.

7 Q. IT WAS SOMETIME IN '03 WHEN THEY STARTED PAYING,
8 CORRECT?

9 A. THAT'S CORRECT.

10 Q. DID YOU TALK TO MIKE SANGIACOMO ABOUT THAT?

11 A. ALL THE TIME.

12 Q. ALL THE TIME?

13 A. YES.

14 Q. AND WHAT REASON DID MR. SANGIACOMO GIVE YOU FOR NOT
15 PAYING YOU THE REIMBURSEMENT HE HAD AGREED TO PAY IN THE
16 OCTOBER 9, 2000 ADDENDUM?

17 A. EVERY TIME WE CALL HIM, HE SAY THAT HE DIDN'T GET THE
18 CITY PAPERWORK.

19 Q. SO HIS REASON WAS THE CITY HADN'T PAID HIM YET, IS
20 THAT IT?

21 A. YES, EVERY TIME HE SAID THAT.

22 MR. FINKELSTEIN: WE HAVE BEEN GOING ABOUT AN HOUR;
23 WOULD THIS BE A CONVENIENT TIME TO TAKE A RECESS?

24 THE FOREMAN: LET'S TAKE TEN MINUTES, AND THE
25 CONFIDENTIALITY AGREEMENT IS STILL IN FORCE.

26 THE WITNESS: YES.

27 (A BRIEF RECESS WAS TAKEN.)

28 THE FOREMAN: I'LL CALL THE GRAND JURY BACK TO

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1 ORDER, PLEASE. LET THE RECORD SHOW ALL GRAND JURORS ARE
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2 PRESENT.

3 BY MR. FINKELSTEIN:

4 Q. MR. DUONG, I'LL JUST REMIND YOU YOU'RE STILL UNDER
5 OATH. DO YOU UNDERSTAND THAT?

6 A. YES.

7 Q. I WILL ASK TO HAVE MARKED AS EXHIBIT 78, I BELIEVE, A
8 ONE-PAGE DOCUMENT WHICH SEEMS TO BE PART OF A FOUR-PAGE FAX.
9 IT'S A LETTER DATED OCTOBER 20, 1998, AND IT'S ADDRESSED TO A
10 ROBERTO FLOTTE, F-L-O-T-T-E, FROM DAVID DUONG.

11 THE FOREMAN: SO MARKED.

12 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
13 JURY EXHIBIT 78.)

14 BY MR. FINKELSTEIN:

15 Q. CAN YOU TELL US IF YOU'VE SEEN EXHIBIT 78 BEFORE?

16 A. YES.

17 Q. WHAT IS THIS DOCUMENT?

18 A. A LETTER TO ROBERTO FLOTTE, LONGSHOREMEN'S UNION
19 LOCAL 6.

20 Q. IS THAT A LETTER FROM YOU?

21 A. YES.

22 Q. IS THAT YOUR SIGNATURE AT THE BOTTOM OF THE LETTER?

23 A. YES.

24 Q. WAS THE LETTER SENT ON OCTOBER 20, 1998?

25 A. YES.

26 Q. AND IS -- THIS MORNING YOU TOLD US THAT YOU HAD MADE
27 A COMMITMENT TO THE LONGSHOREMEN THAT IF YOU EXPANDED YOUR
28 BUSINESS OUTSIDE OF OAKLAND WITHIN THE LONGSHOREMEN'S

1 TERRITORY THAT YOU WOULD CONTINUE TO USE THE LONGSHOREMEN,
2 CORRECT?

3 A. YES.

4 Q. AND IS THIS THE LETTER THAT EMBODIES THAT COMMITMENT?

5 A. YES.

6 Q. IS THIS THE LETTER THAT MR. FLOTTE REFERENCED IN HIS
7 LETTER TO THE MAYOR ON OCTOBER 4, 2000?

8 A. I THINK SO.

9 Q. IN OTHER WORDS, REMEMBER IN HIS LETTER TO THE MAYOR
10 HE SAID THAT THERE WAS A LETTER AGREEMENT THAT WAS PART OF THE
11 COLLECTIVE BARGAINING AGREEMENT?

12 A. YES.

13 Q. AND IS THAT WHAT THIS LETTER IS?

14 A. I THINK SO.

15 Q. YEAH. SO THIS IS PART OF YOUR COLLECTIVE BARGAINING
16 AGREEMENT WITH THE LONGSHOREMEN, CORRECT?

17 A. YES.

18 Q. AND ACCORDING TO THE TERMS OF THIS LETTER, CWS IS
19 PROMISING THAT ILWU LOCAL 6 SHALL REPRESENT CWS' S MATERIAL
20 PROCESSORS AND PROCESSING EQUIPMENT OPERATORS IN ANY FACILITY
21 CWS OPENS IN THE GEOGRAPHIC AREAS WHERE LOCAL 6 OPERATES,
22 CORRECT?

23 A. YES.

24 Q. NOW, LET ME DIRECT YOUR ATTENTION TO THE TOP OF THIS
25 LETTER. THERE' S A FAX HEADER AT THE TOP. DO YOU SEE THAT?

26 A. YES.

27 Q. THE FAX HEADER SAYS, SENT BY CALI FORNIA WASTE
28 SOLUTIONS, AND IT LOOKS LIKE 10/23 AND ZERO, AND SOMETHING IS

1 CUT OFF, RIGHT?
2 A. YES.
3 Q. IT SAYS 1:34 P.M., RIGHT?
4 A. YES.
5 Q. AND IT'S FAXED TO A NUMBER IN 408 WITH A PREFIX
6 STARTING 277, RIGHT?
7 A. YES.
8 Q. DID YOU FAX -- DID CWS FAX THIS COPY OF YOUR LETTER
9 TO THE MAYOR'S OFFICE ON OCTOBER 23, 2000?
10 A. IT LOOKS LIKE IT. I DIDN'T FAX THIS, MUST HAVE BEEN
11 MY PEOPLE WHO FAXED IT.
12 Q. SOMEBODY AT CWS FAXED TO, YOU BELIEVE TO THE MAYOR'S
13 OFFICE IN LATE OCTOBER 2000?
14 A. I DON'T KNOW IF THIS IS TO THE MAYOR.
15 Q. SOMEONE AT THE CITY OF SAN JOSE?
16 A. 277, THAT'S THE CITY PREFIX.
17 Q. THAT WAS AT YOUR DIRECTION THAT SOMEONE AT CWS FAXED
18 THIS OVER TO THE CITY OF SAN JOSE?
19 A. IT MUST BE, BECAUSE --
20 Q. WHAT WAS THE REASON FOR FAXING A COPY OF THE LETTER
21 TO THE CITY OF SAN JOSE?
22 A. I THINK THE REASON IS TO SHOW US THAT WE HAVE THE
23 UNION, AND IF WE GET CONTRACT IN SAN JOSE THERE WILL BE A
24 UNION FOR WORK.
25 Q. LET'S JUST THINK ABOUT THAT ANSWER FOR A MOMENT. IF
26 THIS WAS FAXED ON OCTOBER 23RD, THAT WOULD HAVE BEEN AFTER THE
27 FIRST COUNCIL VOTE AND BEFORE THE SECOND COUNCIL VOTE, IS THAT
28 RIGHT?

1 A. YES.

2 Q. AND THIS WOULD HAVE BEEN AFTER YOUR ADDENDUM OF
3 OCTOBER 9 WITH NORCAL, RIGHT?

4 A. YES.

5 Q. SO WASN'T ONE OF THE REASONS YOU HAD THIS FAXED OVER
6 TO SOMEONE AT THE CITY OFFICE FURTHERING YOUR POSITION THAT I
7 CAN PAY THE HIGHER WAGES AND BENEFITS BUT I'VE GOT TO USE ILWU
8 MEMBERS BECAUSE I HAVE THIS AGREEMENT WITH THEM, WASN'T THAT
9 THE REASON IT WAS FAXED OVER THERE?

10 A. CAN YOU REPEAT --

11 Q. SURE. I'M ASKING WHETHER OR NOT THE REASON THAT THIS
12 WAS FAXED IN LATE OCTOBER TO THE CITY WAS TO STRENGTHEN YOUR
13 POSITION THAT YOU COULD PAY THE HIGHER WAGES AND BENEFITS, BUT
14 YOU HAD AN OBLIGATION TO USE LONGSHOREMEN, NOT TEAMSTERS?

15 A. I DON'T RECALL WHAT THE REASON FOR FAXING. I DON'T
16 WANT TO GIVE SOMETHING --

17 Q. I DON'T WANT YOU TO GUESS. IF YOU DON'T REMEMBER,
18 THAT'S OKAY. BUT THAT WAS YOUR POSITION INITIALLY, RIGHT,
19 THAT YOU CAN PAY THE HIGHER WAGES AND BENEFITS, BUT YOU STILL
20 HAVE TO USE LONGSHOREMEN?

21 A. YES, THAT WAS MY POSITION.

22 Q. THAT WAS YOUR POSITION UNTIL YOU SIGNED THE
23 NEUTRALITY AGREEMENT ON DECEMBER 11, 2000, THE DAY BEFORE THE
24 SECOND COUNCIL VOTE?

25 A. YES.

26 Q. THIS LETTER WOULD BE SUPPORTING THAT POSITION, RIGHT?

27 A. YES.

28 Q. THIS WRITING IN THE UPPER RIGHT-HAND CORNER, THE

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1 HANDWRITING, IT LOOKS LIKE FILE RECYCLABLE PLUS. DO YOU SEE
2 THAT?

3 A. YES.

4 Q. DO YOU RECOGNIZE THE WRITING?

5 A. NO.

6 Q. WHEN WE BROKE FOR THE AFTERNOON RECESS WE WERE
7 TALKING ABOUT NORCAL AND ITS NOT MAKING THE PAYMENTS TO YOU TO
8 REIMBURSE YOU FOR THE EXTRA COST OF PAYING THE TEAMSTERS
9 WAGES, RIGHT?

10 A. YES.

11 Q. AT SOME POINT DID YOU REACH SOME AGREEMENT, SOME
12 INTERIM SETTLEMENT AGREEMENT WITH NORCAL?

13 A. YES.

14 Q. WAS THIS AGREEMENT REDUCED TO WRITING, PUT INTO
15 WRITING?

16 A. YES.

17 MR. FINKELSTEIN: I WOULD LIKE TO MARK AS EXHIBIT 79
18 A MARCH 6, 2003 INTERIM SETTLEMENT AGREEMENT BETWEEN NORCAL
19 AND CWS.

20 THE FOREMAN: SO MARKED.

21 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
22 JURY EXHIBIT 79.)

23 BY MR. FINKELSTEIN:

24 Q. MR. DUONG, HAVE YOU SEEN EXHIBIT 79 BEFORE?

25 A. YES.
26 Q. CAN YOU TELL US WHAT IT IS?
27 A. THIS IS INTERIM SETTLEMENT AGREEMENT BETWEEN NORCAL
28 WASTE SYSTEMS AND CALIFORNIA WASTE SOLUTIONS.

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1 Q. IF YOU LOOK AT THE LAST PAGE OF THE AGREEMENT, IT HAS
2 A SIGNATURE ON BEHALF OF NORCAL DATED MARCH 6, 2003, CORRECT?
3 A. YES.
4 Q. AND THEN BENEATH THAT IT HAS -- IS THAT YOUR
5 SIGNATURE ABOVE THE PRINTED NAME DAVID DUONG?
6 A. YES.
7 Q. DID YOU SIGN IT ON MARCH 17, 2003?
8 A. YES.
9 Q. OKAY. AND UNDER THIS AGREEMENT, WHAT DID NORCAL
10 AGREE TO DO?
11 A. (NO RESPONSE.)
12 Q. WHY DON'T WE BREAK IT UP. IN PARAGRAPH ONE, NORCAL
13 AGREED TO PAY YOU \$46,000 ON SIGNING THE AGREEMENT, RIGHT?
14 A. YES.
15 Q. THAT REPRESENTS THE REIMBURSEMENT FOR THE HIGHER
16 WAGES AND BENEFITS UP TO A CERTAIN DAY, RIGHT?
17 A. YES.
18 Q. AND THERE WAS SOME OTHER DISPUTE AT ISSUE BETWEEN YOU
19 AND NORCAL AT THE TIME YOU ENTERED INTO THIS AGREEMENT, RIGHT?
20 A. YES.
21 Q. THERE WAS A DISPUTE ABOUT TOO MUCH GARBAGE MIXED IN
22 WITH THE RECYCLABLES?

23 A. YES.

24 Q. THERE WAS DISPUTE ABOUT YOUR NOT HAVING YOUR FACILITY
25 WORKING AT FULL CAPACITY BY THE DATE REQUIRED, RIGHT?

26 A. YES.

27 Q. SO YOU HAD CLAIMS BACK AND FORTH THAT MIGHT HAVE
28 AFFECTED THE AMOUNT OF MONEY THAT COULD HAVE BEEN USED TO

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1 OFFSET, PERHAPS, THE AMOUNT THAT NORCAL OWED YOU FOR THE
2 REIMBURSEMENT ON THE HIGHER WAGES AND BENEFITS?

3 A. YES.

4 Q. THAT'S WHAT THIS AGREEMENT IS TRYING TO DEAL WITH?

5 A. YES.

6 Q. BASICALLY THE IDEA IS SOME MONEY IS GOING TO BE PAID
7 FROM NORCAL TO CWS THAT NORCAL DOESN'T WANT YET TO BE TREATED
8 AS ANY KIND OF ADMISSION THEY OWE YOU ANY MONEY, RIGHT?

9 A. YES.

10 Q. THAT'S THE BOTTOM LINE ON THIS AGREEMENT, RIGHT?

11 A. YES.

12 Q. AND LET ME ASK YOU, I'VE SEEN A DOCUMENT -- STRIKE
13 THAT.

14 YOU UNDERSTOOD AT THE TIME THAT YOU ENTERED INTO THE
15 OCTOBER 9 ADDENDUM WITH NORCAL THAT NORCAL WAS GOING TO BE
16 PAYING YOU THE EXTRA MONEY FOR USING, PAYING THE TEAMSTER
17 WAGES AND BENEFITS, RIGHT?

18 A. YES.

19 Q. AND NORCAL WAS GOING TO IN TURN GET THAT MONEY FROM
20 THE CITY OF SAN JOSE, CORRECT?

- 21 A. THAT' S WHAT THEY SAID THEY GOING TO GET.
22 Q. THEY ALSO TOLD YOU THE MAYOR HAD PROMISED NORCAL HE
23 WOULD GET THEM THAT MONEY?
24 A. YES.
25 Q. TO COVER THE HIGHER COST OF USING TEAMSTERS, CORRECT?
26 A. YES.
27 Q. BUT YOUR UNDERSTANDING WAS NORCAL DIDN' T GET THAT
28 MONEY RIGHT AWAY, RIGHT?

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- 1 A. THEY DIDN' T GET MONEY RIGHT AWAY?
2 Q. THE EXTRA MONEY FROM THE CITY.
3 A. CORRECT.
4 Q. SO WERE YOU AND NORCAL INVOLVED IN CONTACTING PEOPLE
5 AT THE CITY TO TRY AND GET THE CITY TO START PAYING NORCAL THE
6 EXTRA MONEY THAT THE MAYOR HAD PROMISED NORCAL, ACCORDING TO
7 NORCAL?
8 A. YES.
9 MR. FINKELSTEIN: I WOULD LIKE TO MARK AS EXHIBIT 80
10 A SEPTEMBER 13, 2002 E-MAIL FROM CARL MOSHER TO DEL BORGSORF
11 TO MARK LINDER AND JIM HOLGERSON, SUBJECT, "RECYCLE PLUS RATE
12 ADJUSTMENT. "
13 THE FOREMAN: SO MARKED.
14 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
15 JURY EXHIBIT 80.)
16 BY MR. FINKELSTEIN:
17 Q. NOW, MR. DUONG, I REALIZE YOU PROBABLY HAVE NEVER
18 SEEN THIS E-MAIL BEFORE, CORRECT?

- 19 A. NO.
- 20 Q. MY QUESTION HAS TO DO WITH SOMETHING THAT IS ASSERTED
21 IN THE E-MAIL. LET ME DIRECT YOUR ATTENTION. AND THIS E-MAIL
22 PURPORTEDLY -- YOU KNOW WHO CARL MOSHER IS?
- 23 A. YES.
- 24 Q. BY THE TIME YOU SUBMITTED THE PROPOSAL AND ARE
25 DEALING WITH THE CITY, HE WAS THE DIRECTOR OF THE
26 ENVIRONMENTAL SERVICE DEPARTMENT, CORRECT?
- 27 A. CORRECT.
- 28 Q. AND YOU KNOW WHO DEL BORGS DORF WAS, RIGHT, HE WAS THE

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- 1 MANAGER OF THE CITY OF SAN JOSE?
- 2 A. YES.
- 3 Q. IN THIS E-MAIL FROM CARL, WHAT APPEARS TO BE AN
4 E-MAIL FROM CARL MOSHER TO DEL BORGS DORF, HE MAKES REFERENCE
5 TO A MEETING THE DAY BEFORE, WHICH WOULD HAVE BEEN THURSDAY,
6 SEPTEMBER 12, WITH JOE GUERRA, AND HE TALKS ABOUT A NEAR
7 IMPASSE BETWEEN CWS AND TEAMSTERS; DO YOU SEE THAT?
- 8 A. YES.
- 9 Q. AT THAT TIME, AT THE END OF 2002, WERE TEAMSTERS
10 TRYING TO GET A COLLECTIVE BARGAINING AGREEMENT WITH YOU?
- 11 A. YES.
- 12 Q. THAT'S CORRECT, IS IT NOT?
- 13 A. YES.
- 14 Q. YOU WERE NEAR AN IMPASSE WITH THEM AT THAT POINT IN
15 THE BARGAINING?
- 16 A. CAN YOU EXPLAIN TO ME THE IMPASSE MEANING?

17 Q. HAVE YOU BEEN INVOLVED IN NEGOTIATING COLLECTIVE
18 BARGAINING AGREEMENTS WITH UNIONS?

19 A. YES.

20 Q. SO YOU KNOW THAT UNDER THE NLRB ACT YOU HAVE AN
21 OBLIGATION TO BARGAIN IN GOOD FAITH?

22 A. YES.

23 Q. BARGAINING IN GOOD FAITH MEANS BARGAINING TO IMPASSE,
24 UNTIL YOU CANNOT --

25 A. OKAY, YES.

26 Q. UNTIL YOU REACH AGREEMENT OR ARE UNABLE TO REACH AN
27 AGREEMENT, RIGHT?

28 A. YES.

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1 Q. AND IMPASSE MEANS YOU'RE UNABLE TO REACH AGREEMENT,
2 RIGHT?

3 A. YES.

4 Q. THERE ARE CERTAIN CONSEQUENCES OF BARGAINING TO
5 IMPASSE. MANAGEMENT CAN IMPLEMENT THE LAST BEST OFFER?

6 A. YES.

7 Q. SOMETIMES THERE ARE DISPUTE RESOLUTION MECHANISMS
8 THAT GET TRIGGERED, MEDIATION, ARBITRATION AND SO FORTH,
9 RIGHT?

10 A. YES.

11 Q. SO DO YOU RECALL -- LET'S BACK UP FOR A MINUTE.

12 IN THE SUMMER OF 2002 YOU STARTED PUTTING TOGETHER
13 YOUR RECYCLING OPERATION IN SAN JOSE, RIGHT?

14 A. YES.

- 15 Q. YOU HAD TO HIRE WORKERS?
- 16 A. YES.
- 17 Q. YOU HAD TO PAY THEM MONEY?
- 18 A. YES.
- 19 Q. THEY WERE WORKING FOR YOU?
- 20 A. YES.
- 21 Q. THEY WERE RECEIVING WAGES AND BENEFITS, RIGHT?
- 22 A. YES.
- 23 Q. DID THEY HAVE A CONTRACT?
- 24 A. NO.
- 25 Q. SO YOU HAD TO GET A CONTRACT IN PLACE WITH THE UNION,
- 26 RIGHT?
- 27 A. CORRECT.
- 28 Q. THE UNION HERE BEING THE TEAMSTERS, RIGHT?

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- 1 A. YES.
- 2 Q. SO YOU MUST HAVE HAD SOME BARGAINING SESSIONS GOING
- 3 ON BETWEEN CWS AND TEAMSTERS TO REACH A COLLECTIVE BARGAINING
- 4 AGREEMENT, RIGHT?
- 5 A. YES.
- 6 Q. AND DO YOU RECALL THAT BY THE FALL OF 2002, YOU HAD
- 7 NOT REACHED AN AGREEMENT?
- 8 A. THAT'S TRUE.
- 9 Q. OKAY. DID YOU ASK THE CITY OF SAN JOSE TO GET
- 10 INVOLVED IN ASSISTING CWS IN REACHING A COLLECTIVE BARGAINING
- 11 AGREEMENT WITH THE TEAMSTERS?
- 12 A. YES.

- 13 Q. WHO DID YOU ASK?
- 14 A. JOE GUERRA.
- 15 Q. WHY DID YOU ASK JOE GUERRA TO ASSIST CWS IN HAMMERING
16 OUT A COLLECTIVE BARGAINING AGREEMENT WITH THE TEAMSTERS?
- 17 A. BECAUSE JOE SAID THAT THE CITY HAVE AGREED WITH
18 NORCAL THAT THE CITY GOING TO PAY FOR THE DIFFERENCE FOR THIS
19 WORK.
- 20 Q. OKAY.
- 21 A. THEREFORE, I ASKED HIM TO BE INVOLVED. BECAUSE SINCE
22 THE CITY WOULD PAY FOR THE DIFFERENCE, THEN IT IS THE BENEFIT
23 OF THE CITY TO BE INVOLVED IN NEGOTIATION, BECAUSE THAT WAY WE
24 CAN CONTROL THE COST OR ELSE IT'S GOING TO BE HIGH IF I HAVE
25 TO HAVE DO IT MYSELF.
- 26 Q. ALSO -- BEAR WITH ME FOR A MINUTE.
27 DURING THE FALL OF 2002, NORCAL WASN'T MAKING ANY
28 PAYMENTS TO YOU FOR THE EXTRA COST, WERE THEY?

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- 1 A. NO.
- 2 Q. YOU HAD HAD PROBLEMS IN CONTRACTUAL AGREEMENTS WITH
3 NORCAL IN THE PAST, RIGHT?
- 4 A. CORRECT.
- 5 Q. WHEN THEY PURCHASED KOGI DO?
- 6 A. KOGI DO.
- 7 Q. WHEN THEY PURCHASED KOGI DO, YOU HAD PROBLEMS WITH
8 NORCAL MEETING ITS OBLIGATIONS, RIGHT?
- 9 A. YES.
- 10 Q. YOU WERE CONCERNED ABOUT NORCAL MEETING WITH ITS

11 OBLIGATIONS UNDER THE OCTOBER 9 ADDENDUM, RIGHT, TO REIMBURSE
12 YOU FOR THE EXTRA MONEY?

13 A. YES.

14 Q. BECAUSE THEY WERE NOT REIMBURSING YOU AS OF THE FALL
15 OF 2000, RIGHT?

16 A. THAT'S CORRECT.

17 Q. AND ISN'T IT CORRECT THAT YOU BELIEVE THAT IT WOULD
18 BE MORE LIKELY THAT NORCAL WOULD PAY YOU, START PAYING YOU
19 ONCE THE CITY STARTED PAYING NORCAL FOR THIS EXTRA COST,
20 RIGHT?

21 A. THAT'S WHAT THEY TELL US, NORCAL TOLD US.

22 Q. RIGHT. AND ISN'T THAT ONE OF THE REASONS YOU WANTED
23 TO GET JOE GUERRA INVOLVED BECAUSE HE COULD NOT JUST HELP YOU
24 WITH THE NEGOTIATIONS, HE WAS THE MAYOR'S BUDGET DIRECTOR, HE
25 COULD HELP GET THE CITY TO MAKE THESE PAYMENTS TO NORCAL,
26 RIGHT?

27 A. YES.

28 Q. AND SO DO YOU RECALL A MEETING WITH CWS, NORCAL, AND

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1 JOE GUERRA IN 2000 SOMETIME ABOUT THESE ISSUES, ABOUT THE
2 TEAMSTER AGREEMENT AND GETTING PAYMENTS FROM NORCAL?

3 A. YES.

4 Q. WHERE DID THIS MEETING TAKE PLACE?

5 A. IT TAKEN PLACE IN JOE GUERRA'S OFFICE.

6 Q. AT CITY HALL?

7 A. YES.

8 Q. WHEN WAS THIS MEETING?

- 9 A. WHEN?
- 10 Q. WHEN.
- 11 A. (NO RESPONSE.)
- 12 Q. WAS IT AFTER JULY 1 OF '02?
- 13 A. MONTHS AFTER THAT.
- 14 Q. SO WOULD HAVE BEEN THE FALL OF 2002?
- 15 A. YES, SOMETIME --
- 16 Q. SOMETIME IN THE SECOND HALF OF 2002?
- 17 A. RIGHT.
- 18 Q. AND WHAT HAPPENED, WHO WAS THERE FROM NORCAL?
- 19 A. THERE WAS MIKE SANGIACOMO, BILL JONES, NORCAL'S
- 20 LOBBYIST, CONSULTANT.
- 21 Q. WHO WAS THAT, ED MCGOVERN?
- 22 A. YES. AND BOB MORALES, TEAMSTERS THERE WITH LARRY
- 23 DAUGHERTY, THE PRESIDENT OF THE TEAMSTER 350. JOE GUERRA WAS
- 24 THERE, I MYSELF, WITH PAUL ROTTENBERG.
- 25 Q. WITH WHO?
- 26 A. PAUL ROTTENBERG.
- 27 Q. PAUL ROTTENBERG?
- 28 A. RIGHT, AND WITH CHRISTINA.

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910

- 1 Q. OKAY. WHAT HAPPENED AT THIS MEETING?
- 2 A. THE MEETING, BECAUSE NORCAL IS NOT PAYING US AND THEY
- 3 KEEP CLAIMING THAT CITY PROMISE THEM AND THE CITY IS NOT
- 4 PAYING THEM. SO WE JUST TELL THEM, LISTEN, THIS IS YOUR
- 5 PROBLEM BECAUSE YOU OWE US MONEY. THIS IS WHAT THE AGREEMENT
- 6 YOU PAY US.

5 ACKNOWLEDGE -- FIRST OF ALL, DID MIKE SANGIACOMO SAY TO
6 JOE GUERRA, LOOK, YOU PROMISED US, THE CITY PROMISED US THAT
7 THEY WOULD PAY THE EXTRA MONEY IF WE GOT CWS TO GO WITH THE
8 TEAMSTERS. DO YOU REMEMBER THAT BEING SAID?

9 A. YES. HE SAID IT FIRST.

10 Q. TELL US WHAT HE SAID.

11 A. I THINK HE START SAYING THAT, JOE, WE HAVE A PROBLEM
12 HERE, THAT'S A LABOR DISPUTE, EMPLOYING THESE PEOPLE, PAYING
13 THE RATE AND PAYING THE BENEFIT AND ALL THAT. AND WE CAN'T
14 GET INTO AN AGREEMENT WITH TEAMSTER, AND WE CANNOT PAY THEM
15 BECAUSE WE DON'T GET THE PAYMENT FROM YOU, A COMMITMENT THAT
16 WE CAN GET THE PAYMENT FROM YOU.

17 Q. NOW, AT THAT POINT DID JOE GUERRA SAY, WHAT
18 COMMITMENT? WHAT ARE YOU TALKING ABOUT? DID HE SAY THAT?

19 A. NO.

20 Q. OR DID HE ACKNOWLEDGE SOMEHOW THAT THAT WAS CORRECT?

21 A. HE ACKNOWLEDGED BECAUSE HE SAID, WE TOLD NORCAL, HE
22 IS TALKING ABOUT -- HE LOOKED AT ME AND SAID, WE TOLD NORCAL
23 WE ARE GOING TO HELP. I THINK NOT ONLY US, BOB MORALES IS IN
24 THERE TOO. SO HE SAID, WE TOLD NORCAL WE WERE GOING TO HELP
25 GET NORCAL PAID FOR THE DIFFERENCE THAT YOU GUYS HAVE TO PAY
26 FOR.

27 Q. THEN WHAT HAPPENED?

28 A. SO THERE WAS AGREEMENT FOR IT.

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1 Q. SO EVERYONE IN THE ROOM APPARENTLY UNDERSTOOD THAT
2 THERE WAS A, SOME KIND OF A COMMITMENT TO GET NORCAL

3 REIMBURSED SO THEY COULD REIMBURSE CWS FOR THE EXTRA LABOR
4 COSTS, RIGHT?
5 A. RIGHT.
6 Q. SO THEN WHAT HAPPENED, WHERE DID YOU GO FROM THERE?
7 A. I THINK THE MEETING DID NOT GO NOWHERE, BECAUSE
8 NORCAL SAY THEY COULDN' T PAY THE EXTRA PAYMENT.
9 Q. WHAT DID MR. GUERRA SAY?
10 A. WELL, AFTER THE MEETING THEY BREAK US TO A
11 DIFFERENT -- THEY ASKED US TO GO OUT OF THE ROOM.
12 Q. AND WHO STAYED BEHIND?
13 A. I THINK ONLY NORCAL AND TEAMSTERS STAY BEHIND. NOT
14 TEAMSTER, IT'S NORCAL. I'M SURE NORCAL, MIKE SANGIACOMO AND
15 BILL AND THE LOBBYIST STAY BEHIND.
16 Q. WHAT ABOUT MR. GUERRA, WHERE DID HE GO?
17 A. OH, HE STAYED TOO.
18 Q. HE STAYED, MR. GUERRA?
19 A. YEAH.
20 Q. YOU WERE ASKED TO WALK OUT OF THE ROOM?
21 A. RIGHT.
22 Q. WHAT ABOUT MR. MORALES, DID HE STAY OR DID HE GO
23 OUTSIDE?
24 A. I RECALL ONLY ME AND MY PEOPLE WALK OUT -- IT'S BOB
25 STILL IN THERE.
26 Q. YOUR RECOLLECTION IS AFTER THERE WAS ACKNOWLEDGMENT
27 ABOUT THIS COMMITMENT TO PAY THIS EXTRA MONEY TO NORCAL, WHICH
28 WOULD THEN TRICKLE DOWN TO CWS FOR THE EXTRA LABOR COST, CWS

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1 WAS ASKED TO STEP OUTSIDE?
2 A. YES.
3 Q. AND EVERYONE ELSE REMAINED INSIDE?
4 A. YES.
5 Q. AND HOW LONG DID THEY REMAIN INSIDE?
6 A. I GUESS THAT'S PROBABLY ABOUT 10, 15 MINUTES.
7 Q. THEN WHAT HAPPENED?
8 A. THEN I THINK THEY SET UP A DIFFERENT MEETING, WE HAVE
9 TO COME BACK AND MEET WITH JOE AGAIN.
10 Q. OKAY. DO YOU HAVE ANY WAY TO FIX THE DATE OF THIS
11 MEETING, A CALENDAR, A PDA, AN OUTLOOK ENTRY ON YOUR COMPUTER?
12 IS THERE ANY WAY YOU CAN FIX THE DATE OF THIS MEETING?
13 A. YOU MEAN THE DATE THAT I NOTED DOWN SOMEWHERE?
14 Q. YES.
15 A. I USED TO DO THAT ON MY COMPUTER, BUT COMPUTER HAS
16 BEEN REPLACED FOR A WHILE AGO, AND BECAUSE OF THE VIRUS THING
17 THEY CANNOT GET THE INFORMATION, ANYTHING OUT OF IT. BUT, YOU
18 KNOW, USUALLY THAT'S WHERE I PUT IT, ON MY COMPUTER, ON THE
19 DAY.
20 Q. SO YOU DON'T BELIEVE YOU HAVE ANY RECORD THAT WOULD
21 FIX THE DATE OF THIS MEETING?
22 A. MY UNDERSTANDING IS WE ASKED, I MYSELF AND ASKING MY
23 SISTER CHRISTINA, WE LOOK ALL OVER. BECAUSE WE HAVE THE
24 SUBPOENAS FOR ALL DOCUMENTS, WE TRY TO LOOK AT EVERYTHING WE
25 CAN.
26 Q. AND YOU CAN'T FIND IT?
27 A. UP TO NOW, BECAUSE WE KNOW LOTS OF THINGS IN
28 COMPUTER, MY OWN COMPUTER, WE LOST BECAUSE AT THAT TIME WE

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1 DIDN' T EVEN HAVE A SERVER ON IT.

2 Q. YOU DIDN' T HAVE A SERVER AT THAT TIME?

3 A. RIGHT, EVERYBODY HAS PERSONAL COMPUTER.

4 Q. HOLD ON A SECOND, WE' RE GOING TO LOOK FOR A DOCUMENT.

5 DO YOU RECALL THE TIME OF DAY THAT THE MEETING TOOK
6 PLACE?

7 A. NO, I DON' T, BUT I THINK IT' S LIKE IN THE MORNING,
8 BUT I DON' T KNOW THE TIME, BUT IT HAPPENED IN THE MORNING.

9 Q. WAS TONY ARREOLA IN THIS MEETING?

10 A. SINCE YOU MENTIONED IT, I THINK HE WAS IN THAT
11 MEETING.

12 Q. LET ME ASK YOU THIS: HAD YOU RETAINED TONY ARRIOLA
13 TO HELP YOU HELP NORCAL GET THIS MONEY FROM THE CITY SO THAT
14 THEY WOULD REIMBURSE YOU FOR YOUR EXTRA LABOR COSTS?

15 A. NO, THAT' S NOT WHAT WE HIRED HIM TO DO.

16 Q. DID YOU AMEND YOUR ARRANGEMENT WITH HIM TO INCLUDE
17 THAT AT SOME POINT?

18 A. THAT I DON' T REMEMBER.

19 MR. FINKELSTEIN: MAY I HAVE JUST A MOMENT?

20 MR. FOREMAN, I WANT TO REVIEW SOME DOCUMENTS, SEE IF SOME
21 ADDITIONAL MATERIAL HAS BEEN PROVIDED IN SOME OTHER SUBPOENAS.
22 I' M THINKING RATHER THAN PROCEEDING NOW, WE SHOULD ADJOURN FOR
23 TODAY. THE NEXT DAY IS MONDAY MORNING?

24 THE FOREMAN: CORRECT.

25 MR. FINKELSTEIN: MR. DUONG, WE' RE GOING TO ASK YOU
26 TO COME BACK NEXT MONDAY MORNING AT 10:00 O' CLOCK.

27 THE WITNESS: YES.

28 MR. FINKELSTEIN: WE NEED TO LOOK AT SOME DOCUMENTS

1 FIRST; I DON'T WANT YOU TO GUESS OR BE UNCERTAIN ABOUT SOME
2 THINGS. WE MIGHT BE ABLE TO LOCATE SOME DOCUMENTS ABOUT THIS
3 MEETING. SO NEXT MONDAY WILL BE THE 20TH, I BELIEVE MARCH 20,
4 AT 10:00 A.M. WILL YOU RETURN NEXT MONDAY AT 10:00 A.M.?

5 THE WITNESS: YES, SIR.

6 MR. FINKELSTEIN: RIGHT HERE, NEXT MONDAY AT 10:00
7 AM, AND IS THAT ALL RIGHT?

8 THE WITNESS: YES.

9 MR. FINKELSTEIN: THANK YOU VERY MUCH. YOU MAY STEP
10 DOWN. WE'LL SEE YOU NEXT MONDAY AT 10:00 A.M.

11 THE WITNESS: THANK YOU.

12 THE FOREMAN: TO REMIND YOU, THE CONFIDENTIALITY
13 ADMONISHMENT CONTINUES TO APPLY.

14 THE WITNESS: YES.

15 THE FOREMAN: WE WILL ADJOURN. CAN WE SPEAK MORE
16 ABOUT THE SCHEDULE NEXT WEEK?

17 MR. FINKELSTEIN: SURE. WE HAVE WITNESSES FOR
18 TUESDAY AND POSSIBLY WEDNESDAY OF NEXT WEEK AS WELL, AND I
19 UNDERSTAND THOSE DATES ARE AVAILABLE.

20 THE FOREMAN: YES. WEDNESDAY MORNING I HAVE A
21 COMMITMENT, SO WE CAN ONLY DO IT WEDNESDAY AFTERNOON.

22 MR. FINKELSTEIN: APPARENTLY WE HAVE TIME AVAILABLE
23 MONDAY MORNING, TUESDAY ALL DAY, AND WEDNESDAY AFTERNOON. WE
24 HAVE THURSDAY ALL DAY.

25 THE FOREMAN: DO YOU WANT TO COMMIT ALL OF THOSE?

26 MR. FINKELSTEIN: AT THIS POINT, YES, BUT IF THE
27 SITUATION CHANGES I'LL LET YOU KNOW.

28 THE FOREMAN: LET'S GO OFF THE RECORD SO I CAN POLL
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916

1 THE JURY.

2 (COURT WAS ADJOURNED FOR THE DAY.)

3

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917

1 SAN JOSE, CALI FORNIA MARCH 22, 2006

2

3

PROCEEDINGS:

4

MR. FINKELSTEIN: WHY DON'T WE HAVE MR. MOSHER

5

RETURN.

6

CARL MOSHER,

7

HAVING BEEN PREVIOUSLY SWORN, TESTIFIED ON HIS OATH AS

8

FOLLOWS:

9

MR. FINKELSTEIN: GOOD AFTERNOON, MR. MOSHER. I'LL

10

JUST REMIND YOU THAT YOU'RE STILL UNDER OATH, HAVING BEEN

11

PREVIOUSLY SWORN IN THIS INVESTIGATION. AND YOU HAD SOMETHING

12

TO -- DO YOU NEED THE LISTENING DEVICE?

13

THE WITNESS: YES. I HEARD YOUR OPENING STATEMENT,

14

THOUGH.

15

MR. FINKELSTEIN: IS IT WORKING?

16

THE WITNESS: YES.

17

MR. FINKELSTEIN: MR. FOREMAN, I WOULD LIKE TO MARK

18

AS EXHIBIT 81 AN OCTOBER 6, 2000 E-MAIL FROM CARL MOSHER TO

19

DEL BORGSDORF.

20

THE FOREMAN: SO MARKED.

21

(AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND

22

JURY EXHIBIT 81.)

23

EXAMINATION, RESUMED

24 BY MR. FINKELSTEIN:

25 Q. MR. MOSHER, IF YOU' LL LOOK AT EXHIBIT 81 AND TELL US
26 WHAT THAT IS, PLEASE.

27 A. THIS IS AN E-MAIL FROM MYSELF TO DEL BORGSORF, THE
28 CITY MANAGER.

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918

1 Q. AND WAS THIS AN E-MAIL THAT YOU SENT ON OCTOBER 6,
2 2000?

3 A. YES, IT IS.

4 Q. AND DID YOU SEND IT AT THE TIME INDICATED, WHICH WAS
5 4:28 P. M. ?

6 A. THAT' S CORRECT.

7 Q. AND COULD YOU READ THE NOTES TO US, PLEASE?

8 A. YES.

9 DEL. I SPOKE WITH NORCAL A FEW MINUTES AGO
10 AFTER THEIR MEETING WITH THE MAYOR, AND ON THEIR WAY
11 TO MEETING WITH MANNY DIAZ. APPARENTLY JOE IS
12 TRYING TO WORK OUT A PLAN WHEREBY THE COUNCIL
13 APPROVES THE RECOMMENDATION AND WE REPORT BACK IN A
14 CERTAIN TIME FRAME WHILE WE ARE NEGOTIATING THE
15 CONTRACTS WITH ASSURANCES ON NORCAL' S ABILITY TO
16 PERFORM.

17 NORCAL FELT POSITIVE ABOUT THEIR MEETING WITH
18 THE MAYOR.

19 I' LL BE HERE TILL THE END OF THE DAY. I HAVE
20 MORE HUMOROUS INFO ABOUT THE RUMOR. I HAVE THE
21 LETTER REPORT FROM THE CONSULTANT, IT' S A LITTLE

22 MORE SUBJECTIVE THAN I'D LIKE BUT POSITIVE AND
23 CONFIRMS, TYPO, NORCAL'S ASSUMPTIONS ARE REASONABLE.
24 THEY ARE POLISHING IT NOW. WE'LL HAVE A
25 SUPPLEMENTAL MEMO FIRST THING TUESDAY MORNING WITH
26 THE REPORT AS AN ATTACHMENT.
27 I WILL BE IN EL DORADO HILLS FROM SATURDAY
28 UNTIL SUNDAY NIGHT. I'LL HAVE MY PAGER ON IF

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919

1 NEEDED. CARL.
2 BY MR. FINKELSTEIN:
3 Q. FIRST, A FEW BACKGROUND QUESTIONS ABOUT THE E-MAIL.
4 YOU SAY THAT YOU SPOKE TO NORCAL A FEW MINUTES AGO. DO YOU
5 RECALL WHO YOU SPOKE TO?
6 A. I RECALL THAT WOULD HAVE BEEN BILL JONES FROM NORCAL.
7 Q. OKAY. ANYONE ELSE, OR JUST BILL JONES?
8 A. I DON'T RECALL ANYONE ELSE. IT PROBABLY WAS JUST
9 BILL, BUT IT MAY HAVE BEEN JOHN NICOLETTI ALSO, BUT I
10 COULDN'T -- RECALL THAT.
11 Q. AND HOW DID YOU KNOW THAT THEY HAD A MEETING WITH THE
12 MAYOR EARLIER THAT DAY?
13 A. BECAUSE -- WE'LL SAY AT THIS TIME THAT
14 BILL JONES TOLD ME.
15 Q. AND WHAT DID THE NORCAL FOLKS TELL YOU ABOUT A
16 MEETING WITH THE MAYOR?
17 A. AS I RECALL, WHAT THEY TALKED ABOUT IS THEY WERE
18 ACTUALLY MEETING WITH A NUMBER OF COUNCILMEMBERS. THIS WAS
19 JUST PRECEDING THE RECOMMENDATION TO THE COUNCIL TO AWARD A

20 CONTRACT TO NORCAL FOR RECYCLING AND WASTE COLLECTION AND YARD
21 TRIMMINGS. AND SO THEY WERE TALKING TO THE COUNCIL, WHY YOU
22 SHOULD AWARD IT TO US, THAT'S THE GENERAL BACKGROUND BEHIND
23 IT.

24 Q. DID THEY SAY ANYTHING TO YOU ON THIS OCCASION ABOUT
25 ANY CONVERSATION WITH THE MAYOR ABOUT THE TEAMSTERS?

26 A. NO, THEY DID NOT.

27 Q. DID THEY SAY ANYTHING TO YOU ON THIS OCCASION ABOUT
28 ANY CONVERSATION WITH THE MAYOR ABOUT PAYING HIGHER WAGES AND

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1 BENEFITS THAN WAS PROVIDED FOR IN THEIR PROPOSAL?

2 A. NO, THEY DID NOT.

3 Q. YOU MAKE A REFERENCE TO MORE HUMOROUS INFO ABOUT A
4 RUMOR.

5 A. YES, THAT'S IN REFERENCE TO A RUMOR THAT WAS SURFACED
6 BY A COUNCILMEMBER THAT I WAS RESIGNING MY POSITION AND GOING
7 TO WORK FOR NORCAL, WHICH WAS ABSOLUTELY UNTRUE, BUT -- JOHN
8 DIQUISTO WAS THE COUNCILMEMBER, AND JOHN DIQUISTO HAD QUITE A
9 SENSE OF HUMOR.

10 Q. DID THEY INDICATE TO YOU WHAT TIME THEIR MEETING WITH
11 THE MAYOR HAD TAKEN PLACE?

12 A. IF THEY DID, I DON'T REMEMBER.

13 Q. WHERE WAS IT THAT THEY MET WITH YOU?

14 A. THEY EITHER MET WITH ME OR IT WAS A PHONE CALL. AND
15 IT WOULD HAVE BEEN IN MY OFFICE, IN ENVIRONMENTAL SERVICES.

16 Q. YOUR BEST RECOLLECTION IS THAT THE PERSON FROM NORCAL
17 THAT YOU SPOKE TO WAS BILL JONES?

- 18 A. YES, THAT' S CORRECT.
- 19 Q. POSSIBLY JOHN NICOLETTI WAS THERE AS WELL, BUT YOU' RE
- 20 NOT SURE?
- 21 A. THAT' S CORRECT.
- 22 Q. YOU DON' T RECALL MIKE SANGIACOMO BEING THERE?
- 23 A. NO, HE WAS NOT THERE.
- 24 Q. DO YOU RECALL WHAT TIME OF THE DAY IT WAS THAT YOU
- 25 HAD THIS MEETING WITH THE NORCAL PEOPLE?
- 26 A. NO. IT PROBABLY WAS AFTER LUNCH, A PHONE CALL AFTER
- 27 LUNCH.
- 28 Q. DID YOU SAY A PHONE CALL?

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921

- 1 A. YEAH, WHEN I SAY MEETING HERE, OR I SPOKE WITH
- 2 NORCAL.
- 3 Q. I' M SORRY, THIS WAS NOT A FACE-TO-FACE MEETING?
- 4 A. WELL, I DON' T REMEMBER. IT COULD HAVE BEEN A
- 5 TELEPHONE CALL BECAUSE I WAS TALKING WITH NORCAL PROBABLY ON
- 6 AN EVERY OTHER DAY BASIS BY TELEPHONE. OR IT COULD HAVE BEEN
- 7 WHERE THEY SHOWED UP AT MY OFFICE AND SAID, WE HAVE BEEN OVER
- 8 AT CITY HALL AND WE WOULD LIKE TO TELL YOU WHAT' S GOING ON,
- 9 AND I DON' T REMEMBER WHI CH.
- 10 Q. WASN' T YOUR OFFICE AT CITY HALL?
- 11 A. MY OFFICE AT THE TIME WAS A BLOCK AWAY FROM CITY HALL
- 12 AT 777 NORTH FIRST STREET, RIGHT ACROSS THE STREET.
- 13 Q. WE' RE TALKING ABOUT THE OLD CITY HALL AT THIS TIME?
- 14 A. THAT' S CORRECT.
- 15 Q. YOU' RE NOT EVEN SURE, WHEN YOU SPOKE WITH THE NORCAL

16 PEOPLE, WHETHER IT WAS FACE TO FACE OR OVER THE PHONE?
17 A. NO. I DON'T REMEMBER.
18 Q. THIS CONVERSATION WITH NORCAL, THIS E-MAIL WOULD HAVE
19 BEEN ON FRIDAY, OCTOBER 6, 2000?
20 A. CORRECT.
21 Q. WHICH WOULD HAVE BEEN THE FRIDAY BEFORE THE TUESDAY,
22 OCTOBER 10TH, THE FIRST COUNCIL VOTE ON THE CONTRACT?
23 A. THAT'S CORRECT.
24 MR. FINKELSTEIN: I WILL ASK TO HAVE MARKED AS
25 EXHIBIT 82 AN E-MAIL CHAIN. THE EARLIEST E-MAIL IS DATED
26 FEBRUARY 15, 2001, AND IS FROM CARL MOSHER TO JOE GUERRA. AND
27 THEN IT'S FOLLOWED BY A SECOND E-MAIL FROM JOE GUERRA TO
28 CARL MOSHER, AND THEN A THIRD E-MAIL FROM DEL BORGS DORF TO

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922

1 RITA MEGRATH.
2 COULD YOU TAKE A LOOK AT THIS EXHIBIT, PLEASE?
3 THE FOREMAN: SO MARKED.
4 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
5 JURY EXHIBIT 82.)
6 BY MR. FINKELSTEIN:
7 Q. TELL US WHAT IT IS.
8 A. THE FIRST E-MAIL AT THE BOTTOM OF THE PAGE IS AN
9 E-MAIL FROM ME TO JOE GUERRA WITH A COPY TO DEL BORGS DORF.
10 WOULD YOU LIKE ME TO READ IT?
11 Q. WHY DON'T YOU READ THE FIRST E-MAIL.
12 A. YES. THE FIRST E-MAIL AT THE BOTTOM OF THE PAGE
13 SAYS:

14 JOE, DEL SPOKE WITH ME YESTERDAY ABOUT NORCAL
15 AND SUGGESTED THAT I GIVE YOU A SHORT UPDATE. I
16 SPOKE WITH BILL JONES OF NORCAL THIS MORNING
17 REGARDING CONTRACT NEGOTIATIONS. NEGOTIATIONS ARE
18 GOING WELL.
19 "THE" SHOULD BE "THEY. "
20 THEY HAVE THE NEARLY FINAL DRAFT.
21 WE' RE BASICALLY WORDSMITHING.
22 HE RAISED A SIGNIFICANT CONCERN ABOUT INCREASED
23 LABOR COSTS FOR MRF. CALIFORNIA WASTE SOLUTIONS
24 ANTICIPATED A LABOR AGREEMENT WITH THE LONGSHOREMEN.
25 IF THEY ENTER INTO AN AGREEMENT WITH THE TEAMSTERS,
26 THEY CLAIM THEIR COSTS WILL INCREASE SEVERAL HUNDRED
27 THOUSAND DOLLARS ANNUALLY ABOVE PROPOSED COSTS. HE
28 IS WAITING FOR THE EXACT NUMBERS FROM CWS AND WILL

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923

1 DETERMINE WHAT TO DO NEXT.
2 Q. THIS WAS AN E-MAIL YOU SENT TO JOE GUERRA ON FEBRUARY
3 15, 2001?
4 A. CORRECT. AT 11:43 THAT MORNING.
5 Q. IS IT CORRECT AS THE E-MAIL SUGGESTS THAT YOU SPOKE
6 WITH BILL JONES THE MORNING OF FEBRUARY 15?
7 A. YES.
8 Q. AND THAT WAS REGARDING CONTRACT NEGOTIATIONS?
9 A. YES. THAT WAS THE CONTRACT NEGOTIATIONS OF THE EXACT
10 LANGUAGE, WHICH WOULD BE IN THE CONTRACT BETWEEN NORCAL AND
11 THE CITY.

12 Q. AND TO REFRESH OUR RECOLLECTION, THE SECOND COUNCIL
13 VOTE I THINK WAS DECEMBER 12, 2000 OR THEREABOUTS?

14 A. RIGHT. INITIAL VOTE IN OCTOBER, THE SECOND IN
15 DECEMBER, AND RECOMMENDED THAT WE COME BACK WITH THE
16 DOCUMENTS, WHICH WE CAME BACK I THINK IN MARCH.

17 Q. OF 2001?

18 A. OF 2001.

19 Q. SO THIS, TIMING-WISE, THIS E-MAIL IS IN THE MIDDLE OF
20 CONTRACT NEGOTIATIONS?

21 A. CORRECT. THE CONTRACT WAS INCLUDED IN THE RFP. AND
22 WHEN I MENTIONED THE WORD HERE, WE'RE BASICALLY WORDSMITHING,
23 WE DID NOT START FROM SCRATCH WITH A CLEAN PIECE OF PAPER IN
24 WRITING THE CONTRACT. THE RFP ALREADY HAD THE CONTRACT AS WE
25 CONTEMPLATED IT SHOULD BE, AND WE WERE BASICALLY CHANGING
26 CERTAIN SECTIONS TO A MINOR DEGREE. THAT'S WHAT THE
27 WORDSMITHING --

28 Q. INCLUDED WITH THE RFP WAS A CONTRACT?

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1 A. THAT'S CORRECT.

2 Q. AND WHICH LAID OUT THE BASIC TERMS OF THE CONTRACT?

3 A. THAT'S RIGHT.

4 Q. THIS WAS A QUESTION OF DOTTING THE I'S AND CROSSING
5 THE T'S?

6 A. THAT'S CORRECT.

7 Q. NOW, IS IT TRUE THAT BILL JONES RAISED A CONCERN
8 ABOUT INCREASED LABOR COSTS FOR THE MRF WORKERS?

9 A. YES, HE DID.

10 Q. THIS IS IN A CONVERSATION YOU HAD ON THE MORNING OF
11 FEBRUARY 15?

12 A. THAT' S RIGHT.

13 Q. HE MENTIONS SOMETHING ABOUT ENTERING INTO AGREEMENT
14 WITH THE TEAMSTERS AS WELL.

15 A. YES, HE DID. IN THE ORIGINAL SUBCONTRACT THAT CWS
16 ADDED ANTICIPATED THAT THEY WERE GOING TO USE LONGSHOREMEN.
17 SUBSEQUENT TO THAT, THEY CHANGED THEIR MIND. OUR CONTRACT DID
18 NOT PRESCRIBE WHICH LABOR UNION THE CONTRACTOR OR
19 SUBCONTRACTOR WOULD BE USING FOR THEIR LABORERS. NOR WAS
20 THERE A PREVAILING WAGE FOR THE WORKERS AT THE MRF FACILITY,
21 SO IT REALLY WASN' T OUR CONCERN WHICH LABOR UNION REPRESENTED
22 THE WORKERS.

23 Q. NOW, IN THIS CONVERSATION YOU HAD WITH BILL JONES ON
24 THE MORNING OF FEBRUARY 15, 2001, DID HE TELL YOU ANYTHING
25 ABOUT ANY CONVERSATION HE MAY HAVE HAD WITH THE MAYOR OR
26 MAYOR' S OFFICE ON OR ABOUT OCTOBER 6, 2000 CONCERNING WHICH
27 UNION CWS WAS GOING TO RECOGNIZE FOR ITS SAN JOSE MRF
28 FACILITY?

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925

1 A. NO, THEY DID NOT.

2 Q. IN YOUR CONVERSATION ON THE MORNING OF FEBRUARY 15,
3 2001 WITH BILL JONES, DID HE MENTION ANYTHING ABOUT ANY
4 PROMISES OR ASSURANCES FROM THE MAYOR OR MAYOR' S OFFICE ABOUT
5 NORCAL RECEIVING EXTRA COMPENSATION TO COVER THE COST OF
6 INCREASED WAGE AND BENEFITS BEYOND WHAT THEY HAD ANTICIPATED
7 IN THEIR PROPOSAL?

- 8 A. NO, HE DID NOT.
- 9 Q. WHY DID YOU SEND THIS E-MAIL TO JOE GUERRA?
- 10 A. AS IT SAYS IN THAT FIRST SENTENCE, I SENT IT BECAUSE
- 11 I HAD SPOKEN TO DEL ABOUT THE CONVERSATION AND HE SUGGESTED
- 12 THAT I TALK WITH, DEL SUGGESTED I SEND AN E-MAIL TO
- 13 JOE GUERRA.
- 14 Q. WHY DID YOU TALK TO DEL BORGS DORF ABOUT YOUR
- 15 CONVERSATION WITH BILL JONES?
- 16 A. WE WERE, THIS WAS AS YOU DESCRIBED, IN BETWEEN
- 17 PREPARING THE CONTRACTS, AND I WAS BASICALLY KEEPING THE
- 18 MANAGER'S OFFICE INFORMED OF DEVELOPMENTS AS THEY WERE GOING
- 19 ALONG.
- 20 Q. OKAY. IN YOUR CONVERSATIONS AROUND THIS TIME,
- 21 FEBRUARY 15, 2001, WITH DEL BORGS DORF OR JOE GUERRA, WAS THERE
- 22 ANY DISCUSSION ABOUT THE CITY POSSIBLY BEING CALLED UPON TO
- 23 PAY FOR THESE EXTRA LABOR COSTS IN THE EVENT THAT CWS SWITCHED
- 24 FROM LONGSHOREMEN TO TEAMSTERS?
- 25 A. NO, THERE WASN' T.
- 26 Q. YOU TOLD US ABOUT THE BOTTOM E-MAIL IN THE CHAIN.
- 27 WHY DON' T WE LOOK AT THE NEXT E-MAIL. TELL US WHAT THAT IS.
- 28 IT' S STILL IN EXHIBIT 82?

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926

- 1 A. CORRECT. THE NEXT E-MAIL IN THE MIDDLE OF THE PAGE
- 2 IS FROM JOE GUERRA TO ME ON FEBRUARY 15TH AT 1:11 P.M., AND A
- 3 COPY TO DEL BORGS DORF.
- 4 IT STATES: THANKS. THE NEXT IS THANKS, I KNOW
- 5 WE CAN WORK THIS OUT SMOOTHLY.

6 Q. AND WHAT IS THAT A REFERENCE TO?

7 A. AFTER FIVE YEARS, IT PROBABLY MEANS SOMETHING
8 DIFFERENT THAN IT MEANT TO ME AT THE TIME.

9 Q. WELL, WHAT DID YOU UNDERSTAND IT TO BE A REFERENCE TO
10 BACK ON FEBRUARY 15, 2001?

11 A. AT THAT PARTICULAR TIME I MEANT, THAT COULD BE WE
12 WERE WORKING OUT THE CONTRACT, EVERYTHING IS ON SCHEDULE,
13 WE'LL BE COMING BACK TO THE COUNCIL.

14 Q. SO YOUR TESTIMONY IS THAT ON THE DAY OF THIS E-MAIL
15 YOU UNDERSTOOD MR. GUERRA'S REFERENCE TO MEAN WORK OUT THE
16 CONTRACT LANGUAGE SMOOTHLY, CORRECT?

17 A. THAT'S CORRECT. IT DID NOT MEAN THE SECOND PARAGRAPH
18 WHERE THERE MIGHT BE AN INCREASE IN COSTS. IT DID NOT MEAN I
19 WAS WORKING ANYTHING OUT RELATED TO THAT.

20 Q. I GUESS THIS IS JUST, THE TOP E-MAIL IS JUST --

21 A. THE TOP IS AN E-MAIL THAT DEL SENT DIRECTLY TO RITA.
22 SOMETIMES DEL WOULD COPY RITA WITH E-MAILS FOR HER TO KEEP IN
23 A FILE TO TICKLE LATER ON.

24 Q. THERE IS NO MESSAGE?

25 A. NO MESSAGE.

26 Q. MR. MOSHER, COULD YOU TELL US AGAIN, I APOLOGIZE IF
27 WE HAVE ALREADY ASKED YOU THIS, BUT I JUST WANT TO BE CLEAR ON
28 THIS POINT. WHAT EXACTLY WAS YOUR INVOLVEMENT WITH THE NORCAL

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1 CONTRACT NEGOTIATIONS?

2 A. MY INVOLVEMENT WAS TO OVERSEE THAT NEGOTIATION. I
3 HAD KEY STAFF WORKING WITH NORCAL, AND SUSAN DEVENCENZI FROM

4 THE CITY ATTORNEY' S OFFICE WAS WORKING WITH NORCAL' S ATTORNEY
5 RELATED TO THE CONTRACT.

6 Q. AND BY CONTRACT NEGOTIATIONS, WHAT DID THAT REFER TO?

7 A. IT REALLY MEANT, AS WE WERE DESCRIBING EARLIER, IT
8 WAS NOT A NEGOTIATION OF THE CONTRACT FROM SCRATCH, IT WAS A
9 WORDSMITHING OF THE SAMPLE CONTRACT THAT WAS IN THE RFP TO
10 UPDATE THE PROVISIONS ON ANY CONCERNS THEIR ATTORNEY HAD, WE
11 DID NOT MODIFY THE CONTRACT VERY MUCH.

12 (INTERRUPTION BY THE COURT REPORTER.)

13 Q. THE QUESTION WAS, WHAT WAS YOUR INVOLVEMENT WITH THE
14 NORCAL CONTRACT NEGOTIATION AND WHAT DID THAT REFER TO?

15 A. MY INVOLVEMENT WAS TO OVERSEE THAT CONTRACT
16 NEGOTIATION. I HAD KEY STAFF IN THE ENVIRONMENTAL SERVICES
17 DEPARTMENT INVOLVED IN THAT, SUSAN DEVENCENZI FROM THE CITY
18 ATTORNEY' S OFFICE WAS INVOLVED, AND THE NORCAL ATTORNEY AND
19 BILL JONES FROM NORCAL.

20 Q. AND WHAT WAS BEING NEGOTIATED DURING THESE CONTRACT
21 NEGOTIATIONS?

22 A. WE WERE BASICALLY GOING THROUGH THE DOCUMENT,
23 BASICALLY SECTION BY SECTION. BUT WE DID NOT MAKE VERY MANY
24 CHANGES TO THE TEXT BECAUSE IT WAS ALREADY CONTAINED IN THE
25 RFP.

26 Q. IT WAS MORE OR LESS GETTING THE FINAL LANGUAGE TO
27 CONFORM WITH THE AGREEMENT?

28 A. YES.

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1 Q. NOW, DURING THESE CONTRACT, AND BY CONTRACT

2 NEGOTIATIONS THIS IS SOMETHING THAT WOULD HAVE OCCURRED AFTER
3 THE DECEMBER CITY COUNCIL VOTE AWARDING THE CONTRACT TO
4 NORCAL?

5 A. CORRECT.

6 Q. AND BEFORE THE SIGNING OF THE FINAL DOCUMENT IN THE
7 BEGINNING OF 2001?

8 A. THAT'S RIGHT.

9 Q. TO YOUR KNOWLEDGE AT THE TIME, DID THE CITY REQUIRE
10 THE USE OF THE TEAMSTERS INSTEAD OF ILWU WORKERS AS PART OF
11 THE CONTRACT NEGOTIATIONS WITH NORCAL?

12 A. NO, WE DID NOT.

13 MR. FINKELSTEIN: SO THE JURORS UNDERSTAND, THE
14 REASON WE BOUGHT HIM BACK IS WE HAVE A COUPLE OF DOCUMENTS WE
15 FOUND SINCE YOUR LAST TESTIMONY, AND WE JUST WANT TO GO OVER
16 THEM TO BE SURE WE UNDERSTAND WHAT THEY MEAN. PLEASE BEAR
17 WITH US.

18 MR. GIBBONS-SHAPIO: THIS IS GRAND JURY EXHIBIT
19 83.

20 THE FOREMAN: SO MARKED.

21 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
22 JURY EXHIBIT 83.)

23 BY MR. FINKELSTEIN:

24 Q. FOR THE RECORD, 83C -- I'M SORRY, 83 IS AN E-MAIL
25 FROM CARL MOSHER TO DEL BORGS DORF, WHICH APPEARS TO HAVE BEEN
26 ALSO SENT ALONG TO RITA MEGRATH. CAN YOU TAKE A LOOK AT 83
27 AND TELL US WHAT THIS IS?

28 A. THIS IS AN E-MAIL FROM MYSELF ON TUESDAY, JUNE 18,

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1 2002, TO DEL BORGS DORF AND MARK LINDER, THE ASSISTANT CITY
2 MANAGER, WITH A COPY TO JIM HOLGERSON, WHO WAS DEPUTY CITY
3 MANAGER, AND NINA GRAYSON, WHO WAS THE CONTRACT COMPLIANCE
4 OFFICER.

5 Q. AND WHAT WAS THE PURPOSE, YOUR PURPOSE IN SENDING
6 THIS E-MAIL?

7 A. UH -- THIS WAS AN E-MAIL THAT I SENT TO DEL. I THINK
8 I PROBABLY SENT UPDATES LIKE THIS PERIODICALLY ABOUT THE
9 STATUS OF THE CONTRACT. AND THE START OF THE CONTRACT WAS
10 GOING TO BE JULY 1, AND SO THIS IS JUST 12 DAYS TO GO. JUST
11 TO GIVE THEM AN UPDATE OF WHAT'S GOING ON, SO THAT'S WHAT THE
12 TEXT IS.

13 Q. OKAY. CAN YOU READ THE E-MAIL TO US SLOWLY, PLEASE?

14 A. SURE.

15 DEL AND MARK. THE FOLLOWING IS A LABOR UPDATE
16 FROM BILL JONES OF NORCAL AND RICH CRISTINA OF GREEN
17 TEAM. IN CAPITAL LETTERS, NORCAL. NORCAL MET WITH
18 THE TEAMSTERS LAST FRIDAY. NORCAL OFFERED TO HIRE
19 FIVE MORE DRIVERS FROM THE CASUAL POOL INSTEAD OF
20 HIRING TRANSFER DRIVERS, AS WE DISCUSSED LAST
21 WEDNESDAY. TEAMSTERS RESPONDED YESTERDAY THAT THEY
22 WERE OKAY WITH IT.

23 . TEAMSTERS ARE STILL PUSHING FOR THE CART
24 DELIVERY DRIVERS TO BE TEAMSTERS. NORCAL WAS TO
25 CONSIDER IT AND TELL THEM IN WRITING ON MONDAY.
26 NORCAL'S LETTER WILL SAY IT'S NOT PART OF THE
27 DISPLACED WORKER PROVISIONS, IT'S ALREADY UNDER
28 CONTRACT WITH THE CART SUPPLIER, SO NO. THEY ARE

1 STILL FAR APART ON WAGES.

2 THEY HAVE TWO MORE NEGOTIATION SESSIONS

3 SCHEDULED.

4 BILL DOES NOT THINK THAT THE CONTRACT WILL BE

5 FINAL BY JULY 1.

6 BILL DOES NOT FORESEE ANY LABOR ACTIONS IN THE

7 FIRST MONTH OF OPERATIONS PROBLEMS.

8 NEXT SUBTITLE IS GREEN TEAM IN CAPITAL LETTERS.

9 NO ISSUES RELATED TO THE MRF. THEY ARE FAR PART ON

10 NEGOTIATIONS. RICH SAYS THE CONTRACT WILL NOT BE

11 SIGNED BY JULY 1. RICH DOES NOT FORESEE ANY LABOR

12 ACTIONS IN THE FIRST MONTH OR TWO.

13 ANOTHER SUBHEADING, GENERAL, CAPITAL LETTERS.

14 JOE GUERRA HAS TALKED WITH RICH CRISTINA AND THE

15 TEAMSTERS AND TOLD THEM THE MAYOR WANTS THE CONTRACT

16 SIGNED BY THE END OF JUNE. RICH CRISTINA TOLD HIM

17 NO WAY IT WILL BE DONE THEN.

18 THE TEAMSTERS ARE TRYING TO GET MORE THAN THE

19 PREVAILING WAGE NUMBER INCLUDED IN THE CITY'S STUDY.

20 GREEN TEAM AND I'M SURE NORCAL HAVE BUILT UP THEIR

21 COSTS BASED UPON THE PREVAILING WAGE. RICH CRISTINA

22 TOLD JOE IF THE TEAMSTERS DEMAND HIGHER, HE'S COMING

23 BACK FOR AN ADJUSTMENT TO HIS CONTRACT.

24 Q. IS THERE A PAGE TWO?

25 A. YES. LAST SENTENCE:

26 TEAMSTERS HAVE TOLD NORCAL THAT THERE WILL NOT

27 BE A PROBLEM AT STARTUP. NORCAL, GREEN TEAM, AND I

28 BELIEVE THAT THE WAGE ISSUE, IF THE WAGE ISSUE IS

1 NOT RESOLVED BY MID-AUGUST, THE DRIVERS WILL SLOW
2 DOWN OR BECOME SICK.

3 Q. WOULD YOU SUMMARIZE FOR THE JURY WHAT IT IS THAT'S
4 GOING ON AS FAR AS LABOR ISSUES AT THIS TIME OF THIS E-MAIL?

5 A. AT THE TIME OF THIS E-MAIL, NORCAL AND CWS WERE
6 NEGOTIATING WITH THE TEAMSTERS FOR THE PURPOSE OF DRIVER,
7 CONTRACTS FOR THE DRIVERS OF THE GARBAGE AND RECYCLE TRUCKS.
8 AND SO THEY WERE, WE HAVE PREVAILING WAGE IN THE CONTRACT,
9 WHICH WAS THE MINIMUM THAT MUST BE PAID. OR ABSENT THAT, THEY
10 AGREED THE CONTRACT IS BETWEEN THE TWO, BETWEEN NORCAL AND THE
11 GREEN TEAM, SO AT THIS POINT THEY ARE NEGOTIATING.

12 Q. COULD I ASK YOU TO TRY TO KEEP YOUR VOICE UP? YOU
13 TEND TO BE SORT OF SOFT-SPOKEN. YOU TEND TO DROP YOUR VOICE,
14 AND IT MAKES IT HARD FOR THE REPORTER. MAKE A CONSCIOUS
15 EFFORT TO KEEP YOUR VOICE UP, AND WE WOULD APPRECIATE IT.

16 A. WILL DO.

17 Q. OKAY. SO THERE IS A SUGGESTION IN THIS E-MAIL THAT
18 THE TEAMSTERS ARE TRYING TO GET A CONTRACT IN PLACE THAT WOULD
19 PROVIDE FOR HIGHER WAGES THAN WHAT THE CITY STUDY SUGGESTS THE
20 PREVAILING WAGES WERE, CORRECT?

21 A. THAT'S CORRECT.

22 Q. AND POSSIBLY THE GREEN TEAM EMPLOYEES WANTED MORE AS
23 WELL?

24 A. THAT'S RIGHT. AND WE DIDN'T THINK THAT UNUSUAL. THE
25 PREVAILING WAGE WAS, WE FELT WAS THE BOTTOM, AND THE TEAMSTERS
26 WANTED TO NEGOTIATE UP FROM THAT.

27 Q. AT THE TIME OF THE E-MAIL, WHICH IS WHEN?

28 A. THIS WAS DATED JUNE 18, 2002.

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1 Q. WHAT DID YOU KNOW, IF ANYTHING, ABOUT CWS CHANGING
2 LABOR UNIONS FROM LONGSHOREMEN TO TEAMSTERS?

3 A. AS I RECALL, THEY WERE IN THE MIDST OF DETERMINING
4 HOW THEY WERE GOING TO GO ABOUT THE PROCESS, WHICH WAS THEY
5 WERE GOING TO HAVE A VOTE OF EMPLOYEES THAT WOULD BE EMPLOYED
6 AT THE MRF TO DETERMINE WHICH LABOR UNION WOULD REPRESENT
7 THEM.

8 Q. OKAY. AND DO YOU KNOW WHETHER OR NOT AT THAT TIME,
9 AS OF THAT TIME CWS HAD SIGNED ANY KIND OF NEUTRALITY OR CARD
10 CHECK AGREEMENT WITH THE TEAMSTERS WHICH WOULD ALLOW THE
11 SELECTION OF A UNION BY LOOKING AT PREFERENCE CARDS INSTEAD OF
12 A NATURAL VOTE?

13 A. I DON'T RECALL A NUMBER.

14 Q. AS OF THE DATE OF THE E-MAIL, JUNE 18, 2002, HAD
15 ANYONE SAID ANYTHING ABOUT NORCAL ASKING THE CITY FOR
16 ADDITIONAL MONEY IN THE EVENT THAT CWS HAD TO PAY HIGHER WAGES
17 AND BENEFITS?

18 A. NO ONE HAD ASKED OFFICIALLY, NO.

19 Q. AT LEAST AS TO YOUR KNOWLEDGE?

20 A. NO.

21 Q. CORRECT?

22 A. WOULD YOU RESTATE THAT, PLEASE?

23 Q. AS FAR AS YOU KNEW, NO ONE, NEITHER NORCAL OR CWS,
24 HAD ASKED FOR THE CITY TO PAY ADDITIONAL MONEY TO COVER
25 ADDITIONAL LABOR COSTS.

26 A. AS FAR AS I KNEW, THEY HAD NOT.

27 Q. YOU WERE THE HEAD OF THE ENVIRONMENTAL SERVICES
28 DEPARTMENT?

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1 A. THAT'S CORRECT.

2 Q. AND THIS WAS A CONTRACT THAT WAS BEING ADMINISTERED
3 THROUGH THE ENVIRONMENTAL SERVICES DEPARTMENT?

4 A. THAT'S RIGHT.

5 Q. THIS WAS A CONTRACT YOU WERE SUPERVISING ON BEHALF OF
6 THE CITY?

7 A. THAT'S RIGHT.

8 Q. ORDINARILY YOU WOULD HAVE EXPECTED ANY REQUEST FOR
9 CHANGES IN CONTRACT OR CHANGES IN PAYMENTS TO COME THROUGH
10 YOUR OFFICE?

11 A. THAT'S RIGHT.

12 Q. YOU WOULD EXPECT TO BE INFORMED OF THAT IF THAT HAD
13 OCCURRED?

14 A. YES.

15 Q. SO YOU WOULD HAVE BEEN IN THE LOOP?

16 A. YES.

17 Q. I WILL ASK YOU TO TAKE A LOOK AT EXHIBIT 80, IF YOU
18 WOULD. THE FIRST QUESTION I HAVE IS WHAT IS EXHIBIT 80, IF
19 YOU KNOW?

20 A. THIS IS AN E-MAIL FROM MYSELF TO DEL BORGS DORF AND
21 MARK LINDER AND JIM HOLGERSON, DATED SEPTEMBER 13, 2002.

22 Q. AND IS IT, AS FAR AS YOU KNOW, WAS THAT THE DATE THE
23 E-MAIL WAS SENT, SEPTEMBER 13, 2002?

24 A. YES.

25 Q. AND WHAT'S THE SUBJECT OF THE E-MAIL?

26 A. THE SUBJECT OF THE E-MAIL IS RECYCLING PLUS RATE
27 ADJUSTMENT.

28 Q. AND WHAT PROMPTED YOU TO SEND THIS E-MAIL?

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1 A. WHAT PROMPTED ME TO SEND THIS E-MAIL IS WE WERE RIGHT
2 IN THE MIDST OF PREPARING THE LETTERS TO ALL THE RECYCLE PLUS
3 CUSTOMERS AND THE RATE NOTIFICATION LETTER THAT THE COUNCIL
4 WOULD BE CONSIDERING A RATE ADJUSTMENT, AND WE WERE DOING THAT
5 RIGHT AT THAT TIME.

6 WE HAD A VENDOR WHO WAS STUFFING ENVELOPES TO SEND
7 OUT ABOUT 180,000 LETTERS.

8 Q. ARE THESE LETTERS SOMETIMES REFERRED TO AS THE PROP
9 218 NOTICES?

10 A. THIS IS THE PROP 218 NOTICE.

11 Q. THIS IS REQUIRED BY LAW BEFORE YOU RAISE THE RATES?

12 A. THAT'S CORRECT.

13 Q. AND IF A MAJORITY OF THE PROPERTY OWNERS PROTEST, THE
14 RATE DOES NOT GO INTO EFFECT?

15 A. THEY CAN PROTEST AND THE COUNCIL CAN CONSIDER THEIR
16 PROTEST.

17 Q. YOU'RE GIVING THE PROPERTY OWNERS NOTICE OF THE
18 HEARING SO THEY CAN PROTEST IT?

19 A. CORRECT.

20 Q. WHY DON'T YOU, I THINK YOU EXPLAINED TO US THE
21 CONTEXT, BUT WHAT WAS IT THAT CAUSED YOU TO SEND THIS E-MAIL?

22 A. WHAT CAUSED ME TO SEND THIS E-MAIL IS THAT I HAD HAD
23 A CONVERSATION WITH NORCAL, AND THEY INDICATED THAT THEY WERE
24 NEGOTIATING NOW WITH THE TEAMSTERS, AND THIS WAS FOR THE
25 TEAMSTER NEGOTIATION FOR THE MRF WORKERS AT CWS.

26 Q. OKAY.

27 A. AND NORCAL WAS, CLAIMED THAT THE MAYOR'S OFFICE LAST
28 FALL COMMITTED TO MAKE GOOD ON THIS INCREASE. THIS WAS THE

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1 FIRST TIME AS I RECALL IT THAT I HAD EVER HEARD THAT, ANYONE
2 OTHER THAN NORCAL JUST TELLING ME THAT THINGS ARE GOING TO
3 COST MORE, WE DIDN'T KNOW WHAT WE WERE GOING TO DO ABOUT IT.

4 THIS WAS THE FIRST TIME I HEARD THAT THE MAYOR'S
5 OFFICE HAD BEEN INVOLVED IN DISCUSSIONS RELATED TO THAT.

6 Q. THE DATE OF THE E-MAIL IS?

7 A. SEPTEMBER 13, 2002.

8 Q. AND IS THE E-MAIL ACCURATE WHEN IT SAYS THAT
9 YESTERDAY NORCAL AND CWS MET WITH JOE GUERRA TO DISCUSS LABOR
10 ISSUES?

11 A. IT'S CORRECT TO THE EXTENT THAT'S WHAT NORCAL TOLD
12 ME. I WAS NOT AT THE MEETING, NOR DID JOE TELL ME THAT THEY
13 MET, BUT NORCAL TOLD ME THEY HAD MET.

14 Q. WHAT WAS YOUR SOURCE OF INFORMATION FOR THE E-MAIL?

15 A. IT WAS NORCAL, AND MOST LIKELY AT THAT TIME IT WOULD
16 HAVE BEEN BILL JONES.

17 Q. AND HOW DID MR. JONES CONVEY THIS INFORMATION TO YOU?

18 A. IT WAS A PHONE CALL.

19 Q. WHY DON'T YOU READ THE MAIL TO US.

20 A. OKAY.
21 YESTERDAY NORCAL AND CWS MET WITH JOE GUERRA TO
22 DISCUSS LABOR ISSUES. YOU RECALL THE NEAR IMPASSE
23 THAT CWS IS AT WITH THE TEAMSTERS. CWS CLAIMS IT
24 WILL COST ADDITIONAL MONEY TO RUN THE RECYCLE
25 FACILITY BECAUSE THE TEAMSTERS WILL BE REPRESENTING
26 THE WORKERS RATHER THAN THE LONGSHOREMEN. NORCAL
27 CLAIMS THAT THE MAYOR'S OFFICE LAST FALL COMMITTED
28 TO MAKE GOOD, WHATEVER THAT MEANS.

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1 BY MR. FINKELSTEIN:
2 Q. AND I TAKE IT THIS IS AN E-MAIL THAT WENT OUT ON
3 SEPTEMBER 13, 2002?
4 A. THAT'S RIGHT.
5 Q. SO THE LAST FALL WOULD HAVE BEEN THE FALL OF 2001?
6 A. THAT'S CORRECT.
7 Q. NOW, IS IT POSSIBLE YOU'RE IN ERROR ABOUT WHICH FALL
8 WE'RE TALKING ABOUT? COULD IT HAVE BEEN THE FALL OF 2000, IF
9 YOU RECALL?
10 A. I DON'T RECALL. IT'S POSSIBLE.
11 Q. THIS IS WHAT YOU BELIEVE -- IN OTHER WORDS, THIS IS
12 WHAT YOUR BEST RECOLLECTION WAS AS OF SEPTEMBER 13, 2002, AND
13 THE CONVERSATION YOU HAD WITH BILL JONES FROM NORCAL, WAS THAT
14 ON THAT SAME DAY?
15 A. IT PROBABLY WAS. NORMALLY I TRIED TO, AFTER A PHONE
16 CALL FROM BILL JONES, AND IT WAS AN IMPORTANT ISSUE THAT I
17 WANTED THE MANAGER TO KNOW ABOUT, I SENT THE E-MAIL THE SAME

18 DAY.

19 Q. YOU READ US THE FIRST PARAGRAPH. WOULD YOU CONTINUE
20 READING?

21 A. SURE. SECOND PARAGRAPH:

22 IN ANY EVENT, CWS WAS ENCOURAGED BY THE
23 MEETING. I AM TOLD JOE ASKED NORCAL/CWS TO PROVIDE
24 HIM WITH HOW MUCH MORE NORCAL/CWS NEEDS TO BE
25 COMPENSATED. THEY DON'T HAVE EXACT NUMBERS BECAUSE
26 THEY HAVE NOT COMPLETED NEGOTIATIONS. OUR LAST
27 ESTIMATE OF THIS WAS BETWEEN 500 AND 700 THOUSAND
28 DOLLARS ANNUALLY.

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1 Q. 750, ISN'T IT?

2 A. PARDON ME?

3 Q. IN YOUR E-MAIL, DOESN'T IT SAY 750?

4 A. YES, IT DOES. I'M SORRY. 500 AND 750 THOUSAND
5 DOLLARS ANNUALLY.

6 NEXT SENTENCE. IN OUR LAST DISCUSSION WITH
7 NORCAL ABOUT THIS, WE ARE NOT PROPOSING TO AMEND THE
8 CONTRACTS BECAUSE OF THIS THIRD PARAGRAPH. MY
9 CONCERN IS THIS: THE NOTICES TO RESIDENTS ARE BEING
10 STUFFED INTO ENVELOPES AS I WRITE THIS, AND THE
11 FIRST WAVE WILL BE DELIVERED TO THE POST OFFICE NEXT
12 FRIDAY. THE PROPOSED RATE INCREASE AS CONCEPTUALLY
13 APPROVED BY THE COUNCIL IN JUNE DOES NOT INCLUDE
14 ADDITIONAL MONEY FOR THIS PURPOSE.

15 THE NOTICE IS CONSISTENT WITH COUNCIL ACTION

16 FOR THIS YEAR AND ON THE NEXT THREE YEARS. IF THE
17 MAYOR'S OFFICE GOING TO RECOMMEND PAYING FOR THIS,
18 WE HAVE A PROBLEM.

19 LAST PARAGRAPH: AT THIS POINT WE ARE
20 PROCEEDING WITH THE NOTICES AS PLANNED. THE INFO
21 MEMO TO THE COUNCIL RELATED TO THE NOTICES SHOULD BE
22 ON YOUR DESK FOR SIGNATURE.

23 THAT'S THE END OF THE TEXT.

24 Q. AND SO THIS CONVERSATION WITH BILL JONES ON SEPTEMBER
25 13, 2002 IS WHEN YOU BELIEVE YOU HAD HAD THE CONVERSATION?

26 A. THAT'S CORRECT.

27 Q. BECAUSE YOUR PRACTICE WAS GENERALLY IF YOU WERE GOING
28 TO DOCUMENT ANYTHING ABOUT IT, YOU WOULD DO IT ON THE SAME

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1 DAY?

2 A. THAT'S RIGHT.

3 Q. YOUR BEST RECOLLECTION WAS THAT THIS WOULD HAVE
4 HAPPENED ON SEPTEMBER 13, 2002?

5 A. THAT'S RIGHT.

6 Q. IN THIS CONVERSATION, THIS WAS THE VERY FIRST TIME
7 THAT YOU HAD HEARD ANY SUGGESTION THAT THE MAYOR'S OFFICE HAD
8 MADE ANY REPRESENTATIONS ABOUT ADDITIONAL PAYMENTS TO NORCAL
9 FOR CWS'S ADDITIONAL LABOR COSTS?

10 A. I THINK THIS IS THE FIRST TIME, THIS IS THE REASON I
11 SENT THIS WAS THIS IS NEW NEWS TO ME.

12 Q. NOW, THERE'S A REFERENCE IN HERE ABOUT THE LAST
13 DISCUSSIONS WITH NORCAL. DO YOU SEE THAT?

14 A. AT THE END OF THE SECOND PARAGRAPH, LAST SENTENCE,
15 AND OUR LAST DISCUSSION WITH NORCAL ABOUT THIS WAS WE WERE NOW
16 PROPOSING TO AMEND THE CONTRACT --

17 Q. YES. WHAT IS THAT IN REFERENCE TO?

18 A. IT REFERS TO WHEN BILL MENTIONED THIS TO ME. I THINK
19 I PROBABLY TOLD HIM THAT, YOU KNOW, WE'VE GOT A CONTRACT. AND
20 I'M NOT GOING TO BE PROPOSING TO AMEND IT BECAUSE OF THIS.

21 Q. WHEN YOU SAY YOUR LAST DISCUSSION WITH NORCAL, ARE
22 YOU REFERRING TO DISCUSSION WITH BILL JONES THAT SAME DAY OR
23 SOME PRIOR DISCUSSION?

24 A. I DON'T REMEMBER.

25 Q. OKAY. WOULD IT BE ACCURATE TO SAY THAT WHILE NORCAL
26 MAY HAVE SUGGESTED THAT THEY WERE GOING TO INCUR EXTRA COSTS
27 PRIOR TO THIS DATE AND MAY HAVE SUGGESTED THAT THEY WANTED TO
28 BE PAID EXTRA MONEY, THIS WAS THE FIRST OCCASION WHEN YOU

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1 LEARNED THAT THE MAYOR'S OFFICE HAD GIVEN ANY ASSURANCES ABOUT
2 THAT; IS THAT CORRECT?

3 A. THAT'S CORRECT.

4 Q. AND THE REFERENCE EARLIER ON TO YOUR LAST ESTIMATE
5 BEING BETWEEN 500 AND 750 THOUSAND ANNUALLY, WHAT IS THAT A
6 REFERENCE TO?

7 A. WHEN WE HAD HEARD THAT NORCAL HAD PRESENTED TO US THE
8 EARLIER E-MAIL, THE ONE BEFORE THAT, THAT WAS THAT THERE WAS
9 GOING TO BE ADDITIONAL COSTS, WE DID A BACK OF AN ENVELOPE
10 CALCULATION, OKAY, WHAT WERE THE LONGSHOREMEN BEING PAID, WHAT
11 WERE THE MRF WORKERS BEING PAID AT THE FACILITIES, WHAT WOULD

12 BE THE DIFFERENCE, AND THAT'S HOW WE CAME UP WITH THIS NUMBER.

13 Q. BUT AT THAT TIME WHEN YOU DID THIS ESTIMATE, DID YOU
14 HAVE ANY INFORMATION ABOUT ANYONE IN THE MAYOR'S OFFICE MAKING
15 REPRESENTATIONS TO NORCAL ABOUT THE CITY PAYING THESE EXTRA
16 COSTS?

17 A. NO.

18 MR. FINKELSTEIN: I WILL ASK TO HAVE MARKED AS
19 EXHIBIT 84 AN OCTOBER 1, 2002 E-MAIL FROM CARL MOSHER TO DEL
20 BORGSDORF.

21 THE FOREMAN: SO MARKED.

22 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
23 JURY EXHIBIT 84.)

24 BY MR. FINKELSTEIN:

25 Q. ACTUALLY, THIS IS A CHAIN, IT'S A -- THE BOTTOM
26 E-MAIL IS WHAT I INDICATED, AND THERE IS A TOP E-MAIL FROM
27 DEL BORGSDORF TO CARL MOSHER ON OCTOBER 3, 2002. SO THE
28 RECORD SHOULD BE CLEAR ON EXHIBIT 84.

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1 CAN YOU TELL US WHAT EXHIBIT 84 IS?

2 A. THIS IS AN E-MAIL, AT THE BOTTOM THIS IS AN E-MAIL
3 FROM ME ON OCTOBER 1, 2002 TO DEL BORGSDORF TO MARK LINDER,
4 WHO WAS THE ASSISTANT CITY MANAGER, JIM HOLGERSON, AND LARRY
5 LI SENBEE, THE BUDGET DIRECTOR. THE SUBJECT IS RECYCLE PLUS
6 RATES.

7 Q. WHAT PROMPTED YOU TO SEND THIS E-MAIL ON THIS
8 OCCASION?

9 A. THIS WAS AS A RESULT OF THE INFORMATION I HAD

10 RECEIVED, YOU KNOW, THE FEW WEEKS BEFORE. AND WE PROBABLY HAD
11 SOME TELEPHONE CONVERSATIONS BETWEEN MYSELF AND LARRY AND THE
12 BUDGET OFFICE OF THE CITY MANAGER. SO THEN I SUMMARIZED THAT
13 IN THIS E-MAIL TO DEL AND LARRY.

14 Q. CAN YOU READ THE CONTENT OF YOUR E-MAIL TO DEL
15 BORGSDORF?

16 A. YES.

17 WE HAVE ANALYZED A NUMBER OF SCENARIOS FOR THE
18 RECYCLE PLUS RATE STRUCTURE BASED ON THE POTENTIAL
19 FOR ADDITIONAL UNFORESEEN COSTS. THE ADOPTED BUDGET
20 INCLUDED THE FOLLOWING RATE CASE:

21 SINGLE FAMILIES, SFD, THERE WOULD BE IN '02-'03
22 A THREE PERCENT INCREASE.

23 IN THE YEAR '03-'04, A FOUR PERCENT RATE
24 INCREASE, AND THE YEAR '04-'05 A FIVE PERCENT RATE
25 INCREASE FOR MULTI-FAMILY.

26 IN YEAR '02-'03, THERE WOULD BE A FOUR PERCENT
27 RATE INCREASE, AND '03-'04 A FIVE PERCENT,
28 AND '04-'05, A SIX PERCENT PROPOSED INCREASE.

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1 THIRD PARAGRAPH STARTS: THE NOTICE WHICH WAS
2 TO BE SENT OUT STATED THAT STAFF WOULD BE
3 RECOMMENDING A THREE PERCENT RATE INCREASE
4 IN '02-'03 FOR SFD AND A FOUR PERCENT RATE INCREASE
5 FOR MFD.

6 Q. SFD IS SINGLE FAMILY DWELLING AND MFD IS MULTI-FAMILY
7 DWELLING?

8 A. THAT'S CORRECT.
9 IT ALSO STATED THIS WOULD COVER ADDITIONAL
10 AMOUNTS, UP TO FIVE PERCENT A YEAR IN SFD AND SIX
11 FOR MFD THROUGH '06-'07. THE BOTTOM LINE IS THAT WE
12 DO NOT KNOW AS OF THIS DAY WHAT THE FISCAL IMPACT
13 WILL BE. OUR ESTIMATES RANGE FROM \$780,000 TO
14 \$1,300,000.00 ANNUALLY. EITHER SCENARIO REQUIRES
15 ADDITIONAL REVENUE AND INCREASED RATES IN '02-'03
16 AND BEYOND.
17 I PROPOSE THAT WE WRITE AN INFORMATION MEMO TO
18 THE COUNCIL THAT STATES THAT WE HAVE BECOME AWARE OF
19 POTENTIAL INCREASED UNFORESEEN STARTUP COSTS THAT
20 MAY IMPACT THE RATE STRUCTURE. TO ALLOW THE CITY
21 COUNCIL FLEXIBILITY IN DEALING WITH THIS ISSUE, WE
22 HAVE REVISED THE RATE NOTICES TO SAY THERE IS A
23 POTENTIAL FOR A SIX PERCENT RATE INCREASE PER YEAR
24 IN BOTH SFD AND MFD THROUGH '06-'07. AND WE SAY THE
25 HEARING FOR THE RATE INCREASE WILL BE DECEMBER 17,
26 2002. HOPEFULLY THEN, BETWEEN NOW AND NOVEMBER, WE
27 WILL HAVE HARD INFORMATION TO AMEND THE CONTRACTS IF
28 NECESSARY AND CALCULATE A RATE.

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1 NEXT PARAGRAPH: IF WE ADD THIS TO THE AB ` 939
2 FRANCHISE FEE ITEM WHICH IS MOVED TO NEXT TUESDAY'S
3 AGENDA, I HAVE NO MORE HARD INFORMATION AS DESCRIBED
4 ABOVE AND WE WIND UP WITH AN UGLY Q AND Q SESSION, A
5 REFERENCE TO QUESTION AND QUESTION SESSION WITH NO
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6 INFORMATION ON A SUBJECT WE CAN'T TALK ABOUT.

7 LAST PARAGRAPH BY THE WASTE MANAGEMENT -- BY
8 THE WAY, WASTE MANAGEMENT HAS HEARD OF THE POTENTIAL
9 TO PAY NORCAL MORE DOLLARS AND IS MEETING WITH
10 COUNCIL MEMBERS. THEY WILL PUT A REAL SPIN ON THIS.

11 Q. I'LL ASK YOU TO STOP THERE UNTIL WE GET TO THE REPLY
12 EARLIER ON. AS I RECALL, WHEN WE LOOKED AT THE SEPTEMBER 13,
13 2002 E-MAIL, YOUR STATEMENT IN THAT E-MAIL WAS THAT YOU WERE
14 NOT PROPOSING TO AMEND THE CONTRACT BECAUSE OF THIS.

15 A. THAT'S CORRECT.

16 Q. IN THIS OCTOBER 3, 2002 E-MAIL, HAVE YOU CHANGED YOUR
17 POSITION IN ANY RESPECTS?

18 A. I HAVEN'T CHANGED MY POSITION. WHAT THIS IS IS THE
19 ROYAL WE. WE DECIDED WE WERE GOING TO DO THIS. I WASN'T
20 GOING TO BE PROPOSING IT.

21 Q. SO ARE YOU SUGGESTING THAT YOU ARE TRYING TO GIVE THE
22 COUNCIL FLEXIBILITY IN CASE THEY DECIDE TO DO SOMETHING ABOUT
23 THIS?

24 A. THAT'S CORRECT.

25 Q. WOULD THAT BE AN ACCURATE WAY TO CHARACTERIZE IT?

26 A. YES. AND ALSO THE CITY MANAGER, ALSO THE MANAGER'S
27 OFFICE AND THE BUDGET OFFICE.

28 Q. SO YOU'RE LOOKING AT DIFFERENT SCENARIOS AND GIVING

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1 THE DECISION MAKERS A CHOICE?

2 A. CORRECT.

3 Q. IS THAT WHAT'S GOING ON HERE?

4 A. THAT' S WHAT' S GOING ON HERE.

5 Q. DID SOMETHING HAPPEN BETWEEN THE SEPTEMBER 13, 2002
6 E-MAIL AND THIS OCTOBER 3, 2002 E-MAIL THAT CAUSED YOU TO
7 THINK THAT YOU NEED TO BE PREPARED TO GIVE THE DECISION MAKERS
8 SOME CHOICE IN THIS REGARD?

9 A. I HAD NO STATEMENT FROM ANYONE ELSE THAT THE MAYOR' S
10 OFFICE HAD AGREED. I WAS, I WAS BASING MY INFORMATION ON MY
11 CONVERSATION WITH THE CITY MANAGER' S OFFICE BASED UPON WHAT I
12 KNEW.

13 Q. WHICH WAS BASED ON YOUR CONVERSATION WITH BILL JONES?

14 A. YES.

15 Q. DID YOU ASK JOE GUERRA IF HE KNEW ANYTHING ABOUT ANY
16 AGREEMENT TO TRY TO VERIFY THE INFORMATION THAT BILL JONES WAS
17 GIVING YOU?

18 A. NO, I DISCUSSED THAT WITH DEL.

19 Q. DID DEL KNOW ANYTHING ABOUT ANY AGREEMENT BY THE
20 MAYOR' S OFFICE?

21 A. HE WAS NOT AWARE, OR IF HE WAS AWARE OF IT, HE DIDN' T
22 TELL ME.

23 Q. A FEW DAYS LATER THERE' S A REPLY ON OCTOBER 3; IS
24 THAT CORRECT?

25 A. YES. THE REPLY --

26 Q. I' M SORRY, IT' S THE SAME -- I GUESS THE FIRST E-MAIL
27 IS OCTOBER 1?

28 A. THE E-MAIL I SENT TO DEL IS OCTOBER 1. THE REPLY

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2 Q. MY QUESTION A FEW MINUTES AGO ABOUT YOUR OCTOBER 3
3 E-MAIL SHOULD HAVE SAID THE OCTOBER 1 E-MAIL, RIGHT, BECAUSE
4 THAT'S WHAT YOU HAVE BEEN READING AND TALKING ABOUT?

5 A. YES. WE HAVE BEEN TALKING ABOUT THE OCTOBER 1 E-MAIL
6 I SENT TO DEL.

7 Q. ON OCTOBER 3 HE REPLIED TO YOU?

8 A. YES, WITH A COPY TO MARK LINDER, JOE, HOLGERSON,
9 LARRY LI SENBEE AND RITA MEGRATH, ASSISTANT. IT STATES, I DO
10 NOT KNOW OF ANY BASIS FOR THIS LEVEL OF INCREASE AND CAN'T
11 IMAGINE IT BEING SUPPORTED.

12 Q. WHEN MR. BORGS DORF, THE CITY MANAGER, SAID HE
13 COULDN'T IMAGINE THAT BEING SUPPORTED, WHAT DID YOU UNDERSTAND
14 THAT TO BE A REFERENCE TO?

15 A. SUPPORT BY THE CITY COUNCIL.

16 Q. LET'S RETURN TO YOUR OCTOBER 1 E-MAIL.

17 A. OKAY.

18 Q. THERE'S A STATEMENT ABOUT AN UGLY Q AND Q SESSION,
19 MEANING A QUESTION, I GUESS A QUESTION AND ANSWER SESSION?

20 A. THAT'S CORRECT.

21 Q. WITH NO INFORMATION ON A SUBJECT WE CAN'T TALK ABOUT,
22 CORRECT?

23 A. RIGHT.

24 Q. WHAT WAS THE SUBJECT YOU COULDN'T TALK ABOUT?

25 A. WELL, THE SUBJECT IS WE HAVE THIS REPRESENTATION BY
26 NORCAL THAT SOMEONE IN THE MAYOR'S OFFICE SAID THEY WILL MAKE
27 GOOD ON THIS. WE HAVE THE CITY MANAGER TELLING US THAT NO ONE
28 OF THE MAYOR'S OFFICE HAS SAID THEY HAVE DONE THIS, AND WE ARE

1 HEARING FROM NORCAL IT'S GOING TO COST MORE MONEY, AND IF WE
2 DID WHAT I PROPOSED HERE AND SAY WE HAVE AN UNFORESEEN
3 SITUATION, WE CAN'T SAY WE HAVE THE UNFORESEEN SITUATION
4 BECAUSE THE ONLY WORD WE HAVE IS FROM NORCAL.

5 Q. WHEN YOU SAID YOU COULDN'T TALK ABOUT, WERE YOU
6 SUGGESTING THAT YOU WERE PROHIBITED FROM TALKING ABOUT IT, OR
7 YOU DIDN'T HAVE ENOUGH INFORMATION TO TALK ABOUT IT, OR
8 SOMETHING ELSE?

9 A. GOOD CLARIFICATION. I WAS NOT PROHIBITED FROM
10 TALKING ABOUT IT, IT'S JUST THAT THERE WASN'T ANY DEFINITIVE
11 INFORMATION TO TALK ABOUT.

12 Q. OKAY.

13 MR. GIBBONS-SHAPIRO: THIS IS EXHIBIT 85.

14 MR. FINKELSTEIN: LET'S MARK AS EXHIBIT 85 A CHAIN
15 OF E-MAILS. THE BOTTOM CHAIN IS AN E-MAIL FROM CHUCK REED TO
16 JIM HOLGERSON AND CARL MOSHER DATED NOVEMBER 27, 2002. ABOVE
17 THAT THERE APPEARS TO BE AN E-MAIL FROM JIM HOLGERSON TO
18 CARL MOSHER DATED DECEMBER 2, 2002, AND THE TOP E-MAIL SEEMS
19 TO BE FROM CARL MOSHER TO JIM HOLGERSON AND RITA MEGRATH DATED
20 DECEMBER 2, 2002.

21 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
22 JURY EXHIBIT 85.)

23 BY MR. FINKELSTEIN:

24 Q. STARTING WITH THE BOTTOM E-MAIL, TELL US WHAT IT IS,
25 PLEASE.

26 A. THE BOTTOM E-MAIL IS AN E-MAIL FROM CHUCK REED,
27 COUNCIL MEMBER, TO JIM HOLGERSON AND CARL MOSHER WITH A COPY
28 TO HIS DISTRICT 4 FILE AND TO DAWN WRIGHT DATED NOVEMBER 27,

1 2002. THE SUBJECT IS NORCAL SLASH CWS GARBAGE IN RECYCLE
2 STREAM.

3 Q. CAN YOU READ THE CONTENT OF THAT MESSAGE FOR US,
4 PLEASE.

5 A. YES.

6 JIM AND CARL. I TALKED TO CWS TODAY. THEY
7 TOLD ME THAT THE DATA YOU HAVE ASKED FOR HAS BEEN
8 GIVEN TO NORCAL FOR WEEKS. THEY ARE WORRIED ABOUT
9 BEING ACCUSED OF BREACH OF CONTRACT IF THEY GIVE IT
10 TO YOU UNLESS YOU ASK FOR IT IN WRITING. IS THAT A
11 CORRECT INTERPRETATION OF THE CONTRACT?

12 THEY SAY THAT NORCAL OWES CWS AROUND 700
13 THOUSAND DOLLARS IN REIMBURSEMENTS AND REFUSES TO
14 PAY UNTIL THE CITY PAYS NORCAL. CWS CANNOT CONTINUE
15 TO LOSE MONEY AT THE RATE THEY ARE LOSING IT. CAN
16 NORCAL DO THAT UNDER THE TERMS OF OUR CONTRACT?

17 Q. SO WHAT DID YOU UNDERSTAND THIS MESSAGE TO BE?

18 A. TWOFOLD. ONE IS INFORMATION THAT IS BEING REQUESTED
19 IN THE FIRST PARAGRAPH, I DON'T RECALL WHAT THAT WAS, I THINK
20 IT RELATES TO THE DAILY RATE OF MATERIAL COMING INTO THE MRF
21 FACILITY.

22 Q. THE MATERIAL FLOW RATE?

23 A. YES, AND RESIDUALS AND CONTAMINATION RATES OF THAT
24 MATERIAL.

25 Q. AND THE SECOND PARAGRAPH?

26 A. IT RELATES TO, AS DESCRIBED HERE, THAT NORCAL
27 ACCORDING TO CWS OWES CWS AROUND 700 THOUSAND DOLLARS IN
28 REIMBURSEMENTS AND REFUSES TO PAY IT UNTIL THE CITY PAYS

1 NORCAL.

2 Q. NOW, WHAT DID YOU THINK THAT REFERRED TO?

3 A. I THOUGHT IT REFERRED TO -- WHAT I THOUGHT IT
4 REFERRED TO WAS THE NEGOTIATIONS BETWEEN THE TEAMSTERS AND
5 CWS, WHATEVER THE DIFFERENCE WAS THAT CWS WAS NOW GOING TO
6 HAVE TO PAY BECAUSE THE MRF WORKERS WERE TEAMSTERS.

7 AS I RECALL WHEN -- AT THIS TIME, WHEN THIS CAME
8 ABOUT, THAT WAS THE FIRST TIME WE REALIZED THAT NORCAL HAD
9 MADE SOME KIND OF AGREEMENT WITH CWS THAT THEY WERE GOING TO
10 REIMBURSE CWS FOR THIS ADDITIONAL COST.

11 Q. OKAY, SO YOU BELIEVE THIS WAS THE FIRST TIME, AROUND
12 THIS TIME WAS THE FIRST OCCASION WHEN YOU HAD ANY INKLING THAT
13 NORCAL HAD NOW OBLIGATED ITSELF TO REIMBURSE CWS FOR THE EXTRA
14 COST ASSOCIATED WITH USING TEAMSTERS?

15 A. YES. THE NEXT E-MAIL ON THE TRAIL ABOVE THAT IS AN
16 E-MAIL FROM JIM HOLGERSON TO ME, DATED DECEMBER 2, 2002.

17 SAME SUBJECT. CARL, WHAT IS THE STORY? LOOKS
18 LIKE THEY ARE GETTING CHUCK RIGHT IN THE MIDDLE.

19 Q. WHAT DID YOU MAKE OF THAT? CAN YOU EXPLAIN WHAT THAT
20 MEANS?

21 A. WELL, I THINK WHAT IT MEANT IS NOW CWS WAS GOING TO
22 START TALKING TO COUNCILMEMBERS ON THE ISSUE OF EXTRA COSTS.

23 Q. AND WHAT IS THE REFERENCE TO CHUCK BEING IN THE
24 MIDDLE OF THAT ONE?

25 A. I THINK THAT'S WHAT IT IS. CWS GOING TO CHUCK,
26 SAYING, WE HAVE THIS ISSUE, IT'S NOT BEING RESOLVED, CAN YOU

27 HELP US.

28 Q. I SEE. WHAT'S THE E-MAIL ABOVE THAT?

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1 A. THIS IS E-MAIL SENT FROM ME, RESPONDING TO JIM'S
2 E-MAIL DATED DECEMBER 2, TO JIM HOLGERSON AND TO RITA.

3 JIM AND RITA. HERE'S WHAT I KNOW AS OF 11:45
4 A.M. WE HAVE PAID NORCAL ON TIME EACH MONTH AS PER
5 CONTRACT. I SUSPECT THAT THIS ADDITIONAL MONEY
6 RELATES TO THE ADDITIONAL LABOR COSTS WHICH WE HAVE
7 NO EXACT FIGURES ON OR ADDITIONAL CWS START-UP COSTS
8 OR ADDITIONAL DISPOSAL COSTS DUE TO CONTAMINATION.
9 NORCAL AND CWS HAVE A SUBCONTRACT, WHICH IS THE
10 BASIS FOR PAYMENT TO CWS. WE PAY NORCAL TO COLLECT
11 THE WASTE, THEY PAY CWS TO PROCESS IT UNDER THEIR
12 SUBCONTRACT.

13 INFORMATION AND REPORTS FROM CWS WOEFULLY
14 INADEQUATE. I DO NOT BELIEVE NORCAL IS HOLDING ANY
15 INFORMATION BACK.

16 BY MR. FINKELSTEIN:

17 Q. WHY DID YOU SEND THIS E-MAIL TO JIM HOLGERSON ON
18 DECEMBER 2, 2002?

19 A. IT WAS IN RESPONSE TO THE E-MAIL HE SENT ME ON THE
20 EARLIER MORNING THAT DAY, DECEMBER 2, 2002.

21 Q. WHAT WERE YOU TRYING TO CONVEY TO MR. HOLGERSON BY
22 THIS E-MAIL?

23 A. TWO THINGS, OR SEVERAL THINGS. ONE, THAT WE ARE
24 PAYING NORCAL ON TIME, SO THERE IS NOT AN ISSUE BETWEEN

25 NORCAL' S PAYMENTS FROM THE CITY.
26 AND SECOND, THAT WHATEVER PAYMENT RELATIONSHIP THERE
27 IS BETWEEN NORCAL AND CWS, THAT' S BETWEEN THE TWO OF THEM,
28 THERE IS NO CONTRACTUAL RELATIONSHIP FOR PAYMENT TO CWS UNDER

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1 THE CONTRACT.

2 Q. LOOKING AT THE BOTTOM OF THE CHAIN, THERE' S A
3 REFERENCE TO NORCAL REFUSING TO PAY THE \$700,000
4 REIMBURSEMENTS UNTIL THE CITY PAYS NORCAL. WERE YOU TRYING TO
5 CLARIFY THAT THE CITY WAS PAYING NORCAL WHAT IT WAS LEGALLY
6 OBLIGATED TO PAY UNDER THE THEN EXISTING CONTRACT?

7 A. THAT' S WHAT I AM SAYING.

8 Q. HAD YOU TALKED TO COUNCILMAN REED ABOUT THIS IN THE
9 COURSE OF THESE E-MAILS?

10 A. I PROBABLY DID, AND I COULDN' T TELL YOU WHAT THE
11 CONVERSATION WAS. I WOULD NORMALLY PICK UP THE PHONE AND CALL
12 CHUCK WHEN HE SENT AN E-MAIL OR RESPOND BACK TO HIM.

13 MR. FINKELSTEIN: MAYBE WE SHOULD TAKE A BREAK.

14 THE FOREMAN: LET' S RECESS FOR 10 MINUTES AND
15 RECONVENE AT QUARTER OF 3:00 BY MY CLOCK.

16 LET ME REMIND YOU OF THE CONFIDENTIALITY
17 ADMONITION.

18 THE WITNESS: YES, I UNDERSTAND.

19 (A BRIEF RECESS WAS TAKEN.)

20 THE FOREPERSON: LET' S COME BACK TO ORDER.

21 BY MR. FINKELSTEIN:

22 Q. MR. MOSHER, I DON' T HAVE ANY ADDITIONAL QUESTIONS FOR

23 YOU. LET ME JUST INQUIRE OF THE GRAND JURY TO SEE IF THEY
24 HAVE ADDITIONAL QUESTIONS, AND LET ME JUST POINT OUT TO THE
25 GRAND JURY ONE OF THE THINGS WE WERE HOPING TO ESTABLISH WITH
26 THIS WITNESS IS WHEN IT CAME TO LIGHT, THE POSSIBILITY THAT
27 SOMEONE IN THE MAYOR'S OFFICE HAD GIVEN SOME ASSURANCES TO
28 NORCAL ABOUT NORCAL GETTING EXTRA MONEY FROM THE CITY TO

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1 REIMBURSE CWS FOR THE EXTRA LABOR COSTS, AND I BELIEVE WE HAVE
2 ESTABLISHED THAT, BUT IF ANY OF YOU HAVE ANY QUESTIONS,
3 ESPECIALLY IN THIS AREA, THIS WOULD BE THE WITNESS TO DIRECT
4 THEM TO.

5 SO ARE THERE ANY QUESTIONS?

6 A JUROR: I HAVE ONE.

7 A JUROR: I'M WRITING ONE UP NOW.

8 MR. FINKELSTEIN: TAKE YOUR TIME.

9 MR. MOSHER, JUST A COUPLE QUESTIONS FROM THE GRAND
10 JURORS. IF WE CAN TURN BACK TO EXHIBIT 82, WHICH IS THE
11 FEBRUARY 15, 2001 E-MAIL.

12 THE WITNESS: YES.

13 MR. FINKELSTEIN: AND THE JUROR'S QUESTION IS, THIS
14 E-MAIL IS APPROXIMATELY TWO MONTHS AFTER THE CITY COUNCIL
15 AWARDED THE CONTRACT TO NORCAL, CORRECT?

16 THE WITNESS: THAT'S RIGHT.

17 MR. FINKELSTEIN: AND IT WAS CLEAR TO YOU, WAS IT
18 NOT, THAT THE CONTRACT THAT THE COUNCIL WOULD BE APPROVING
19 WOULD NOT COVER ANY ADDITIONAL LABOR COSTS ASSOCIATED WITH THE
20 USE OF TEAMSTERS INSTEAD OF LONGSHOREMEN, CORRECT?

21 THE WITNESS: THAT'S CORRECT. IT DID NOT CONTAIN
22 ANY LANGUAGE FOR THAT.

23 MR. FINKELSTEIN: OKAY, AND IT WAS CLEAR TO YOU THAT
24 IN ORDER TO COVER THOSE ADDITIONAL LABOR COSTS THERE WOULD
25 HAVE TO BE SOME CITY COUNCIL APPROVAL, MEANING SOME KIND OF
26 AMENDMENT; IS THAT RIGHT?

27 THE WITNESS: THAT'S CORRECT.

28 MR. FINKELSTEIN: THE JUROR WOULD LIKE TO KNOW

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1 WHETHER OR NOT YOU RAISED ANY ISSUE ABOUT THIS TO THE MAYOR'S
2 OFFICE IN THE FEBRUARY 2001 TIME FRAME.

3 THE WITNESS: NO, I DID NOT.

4 MR. FINKELSTEIN: AND WHY IS THAT?

5 THE WITNESS: I ONLY SPOKE TO DEL BORGSDORF RELATED
6 TO THAT.

7 MR. FINKELSTEIN: I'M SORRY?

8 THE WITNESS: I ONLY SPOKE TO DEL, THE CITY MANAGER,
9 ABOUT THAT.

10 MR. FINKELSTEIN: THAT WOULD HAVE BEEN THE ORIGINAL
11 CHAIN?

12 THE WITNESS: CORRECT.

13 MR. FINKELSTEIN: YOU RAISED IT WITH MR. BORGSDORF
14 THROUGH THIS E-MAIL, I TAKE IT, CORRECT?

15 THE WITNESS: THAT'S THE PURPOSE OF THIS E-MAIL.

16 MR. FINKELSTEIN: AND IT WAS, WOULD HAVE NOT BEEN
17 THE NORMAL COURSE FOR YOU TO SPEAK DIRECTLY WITH THE MAYOR OR
18 MAYOR'S OFFICE ABOUT THESE ISSUES?

19 THE WITNESS: NOT THE MAYOR, BUT SOMETIMES I WOULD
20 SPEAK DIRECTLY TO JOE, DEPENDING ON THE ISSUE.

21 MR. FINKELSTEIN: IN THIS CASE YOU CHOSE NOT TO
22 SPEAK WITH JOE GUERRA ABOUT IT?

23 THE WITNESS: THAT'S CORRECT. I CHOSE TO SPEAK TO
24 DEL RELATED TO THE ISSUE.

25 MR. FINKELSTEIN: ANOTHER QUESTION. THIS QUESTION
26 RELATES TO EXHIBIT 80, WHICH I NEED TO LOCATE.

27 THIS IS YOUR SEPTEMBER 13, 2002 E-MAIL FROM
28 DEL BORGSDORF, CORRECT?

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1 THE WITNESS: THAT'S CORRECT.

2 MR. FINKELSTEIN: NOW, IN THIS EXHIBIT YOU'RE
3 TALKING ABOUT AN ESTIMATE OF \$500,000 TO \$750,000 A YEAR FOR
4 ADDITIONAL COSTS, CORRECT?

5 THE WITNESS: THAT'S CORRECT, THAT'S IN THE SECOND
6 PARAGRAPH OF THE E-MAIL.

7 MR. FINKELSTEIN: RIGHT. AND THE JUROR WOULD LIKE
8 TO KNOW WHETHER OR NOT YOU KNEW WHAT THE ACTUAL PAYMENTS WERE
9 AND WHAT WAS COVERED IN THE COST MAKING UP THESE THINGS.

10 THE WITNESS: THIS ESTIMATE IN THIS SECOND PARAGRAPH
11 WAS BASED UPON THE NUMBER OF WORKERS THAT WERE EMPLOYED AT
12 CWS. WHAT THE PAYMENT WOULD HAVE BEEN PER HOUR TO THESE
13 EMPLOYEES IF THEY WERE LONGSHOREMEN, AND WHAT IT MIGHT BE IF
14 THEY NEGOTIATED A HIGHER LEVEL CONTRACT WITH THEM AT THE LEVEL
15 OF, THAT WAS APPROXIMATELY WHAT THE OTHER MRF WORKERS WERE
16 MAKING.

17 SO WE DID A CALCULATION OF THE NUMBER OF EMPLOYEES
18 TIMES THE DIFFERENTIAL AND HOURLY RATE AND ANALYZED THAT FOR A
19 YEAR AND CAME UP WITH THIS NUMBER, \$500,000 TO \$750,000.

20 MR. FINKELSTEIN: LET ME SEE IF THERE ARE ANY OTHER
21 QUESTIONS FROM THE GRAND JURY.

22 I DON'T THINK WE HAVE ANY MORE QUESTIONS FOR YOU.

23 UNFORTUNATELY, WE'RE NOT EXCUSING ANY WITNESSES
24 UNTIL THE INVESTIGATION IS OVER, AND AT THIS POINT I REALLY
25 DON'T THINK WE ARE GOING TO ASK YOU TO MAKE ANOTHER TRIP DOWN
26 HERE.

27 AGAIN, I WANT TO THANK YOU IN BEHALF OF THE JURY FOR
28 ACCOMMODATING US, TO HELP US UNDERSTAND WHAT HAPPENED IN THIS

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1 CASE.

2 THE WITNESS: YOU'RE WELCOME, AND I'M AVAILABLE IF
3 YOU NEED ME TO RETURN.

4 MR. FINKELSTEIN: THANK YOU VERY MUCH.

5 THE FOREPERSON: JUST ONE MORE REMINDER ABOUT THE
6 CONFIDENTIALITY ADMONITION.

7 THE WITNESS: I UNDERSTAND.

8 MR. FINKELSTEIN: THANK YOU VERY MUCH.

9 WE DID HAVE ANOTHER WITNESS SCHEDULED FOR THIS
10 AFTERNOON, BUT THAT WITNESS'S LAWYER HAS A CONFLICT WITH A
11 COURT HEARING HE'S ENGAGED IN, SO THAT CONCLUDES OUR TESTIMONY
12 TODAY.

13 THE FOREPERSON: MY UNDERSTANDING IS THAT THE NEXT
14 TIME WE WILL HAVE A WITNESS IS PROBABLY THE 30TH, THURSDAY.

13 A. GOOD MORNING.

14 Q. I'LL JUST REMIND YOU YOU'RE STILL UNDER OATH. DO YOU
15 UNDERSTAND THAT?

16 A. YES.

17 Q. I BELIEVE, MR. DUONG, WHEN WE RECESSED YOUR TESTIMONY
18 LAST TIME, WE HAD BEEN TALKING ABOUT THE DECEMBER 11, 2000
19 NEUTRALITY AGREEMENT WITH TEAMSTER'S LOCAL 350; IS THAT
20 CORRECT?

21 A. YES.

22 MR. FINKELSTEIN: I WOULD LIKE TO HAVE MARKED AS OUR
23 NEXT EXHIBIT A THREE-PAGE DOCUMENT THAT APPEARS TO BE A
24 TRANSCRIPT OF SORTS RELATING TO A DECEMBER 11, 2000 PHONE
25 MESSAGE.

26 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
27 JURY EXHIBIT 86.)

28 THE FOREMAN: SO MARKED.

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1 BY MR. FINKELSTEIN:

2 Q. MR. DUONG, COULD YOU LOOK AT EXHIBIT 86 AND TELL US
3 IF YOU RECOGNIZE THIS EXHIBIT?

4 A. YES.

5 Q. WHAT IS EXHIBIT 86?

6 A. THIS IS THE TRANSCRIPT OF THE MESSAGE RECORDING.

7 Q. WHAT MESSAGE?

8 A. THE MESSAGE, MR. SANGIACOMO CALLING MY OFFICE AND
9 LEFT MESSAGE ON MY PHONE.

10 Q. AND THIS WAS A VOICEMAIL MESSAGE?

- 11 A. YES.
- 12 Q. AND WHO PREPARED THIS TRANSCRIPT?
- 13 A. RICK NORRIS, N-O-R-R-I-S, OUR ATTORNEY.
- 14 Q. THAT WAS AN ATTORNEY EMPLOYED BY CWS?
- 15 A. YES.
- 16 Q. AND WHAT WAS THIS TRANSCRIPT PREPARED FROM?
- 17 A. THIS IS THE TRANSCRIPT PREPARED --
- 18 Q. FROM WHAT WAS IT PREPARED, THE TRANSCRIPT? HOW WAS
- 19 IT PREPARED, FROM WHAT? WAS THERE A TAPE, A MACHINE?
- 20 A. IT'S FROM THE TAPE.
- 21 Q. AND THIS IS A VOICEMAIL THING?
- 22 A. YES.
- 23 Q. ON YOUR TELEPHONE AT CWS?
- 24 A. YES.
- 25 Q. HAVE YOU HAD A CHANCE TO LISTEN TO THE VOICEMAIL
- 26 MESSAGE AND COMPARE THAT VOICEMAIL WITH THIS TRANSCRIPT?
- 27 A. NO.
- 28 Q. SO YOU DON'T KNOW IF IT'S ACCURATE OR NOT?

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- 1 A. UH -- I DON'T KNOW IF EVERY WORD IS ACCURATE, BUT THE
- 2 WHOLE THING HERE, THAT'S --
- 3 Q. SO IT MAY NOT BE WORD-FOR-WORD ACCURATE, BUT YOU
- 4 BELIEVE WHAT IS SAID HERE IS GENERALLY ACCURATE?
- 5 A. YES.
- 6 Q. AND WAS THIS A MESSAGE THAT WAS LEFT ON YOUR
- 7 TELEPHONE ON DECEMBER 11, 2000?
- 8 A. YES.

9 Q. AND THAT WOULD HAVE BEEN, WAS IT ABOUT 2:00 P.M. AS
10 THE TRANSCRIPT REFLECTS?

11 A. THIS MESSAGE IS -- THIS MESSAGE, THERE IS A FEW
12 MESSAGES IN HERE.

13 Q. THERE ARE SEVERAL MESSAGES?

14 A. RIGHT, AND THIS IS RECORDED AT DIFFERENT TIME OF EACH
15 MESSAGE.

16 Q. LET'S -- THANK YOU FOR CLARIFYING THAT. LET'S START
17 WITH THE FIRST MESSAGE. WHAT WAS THE DATE AND TIME OF THE
18 FIRST MESSAGE, AS BEST YOU CAN RECALL?

19 A. THAT'S ON DECEMBER 11, 2000, AND IT'S 2:00 P.M.

20 Q. WHO WAS THE MESSAGE FROM?

21 A. THAT'S, THE 2:00 P.M. IS THE MESSAGE FROM
22 MR. SANGIACOMO.

23 Q. NOW, IN LOOKING AT THE TRANSCRIPT, IT APPEARS TO ME
24 THAT WHAT YOU DID WAS LISTEN TO THE VOICEMAIL MESSAGE AND THEN
25 DICTATE THIS TRANSCRIPT. IS THAT WHAT HAPPENED?

26 A. YES.

27 Q. OKAY. SO WAS THIS -- AND DID YOU DO THAT, WHEN DID
28 YOU DICTATE THIS TRANSCRIPT?

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1 A. (NO RESPONSE.)

2 Q. WAS IT SOMETIME CLOSE TO DECEMBER 11, 2000?

3 A. UH -- YES. IT IS EITHER ON THE SAME DATE, LATE ON
4 THE SAME DAY, OR THE NEXT DAY.

5 Q. AND SO DOES THAT MEAN THAT WHEN YOU DICTATED FROM THE
6 TAPE, THIS TRANSCRIPT, YOU BELIEVE WHAT THE MESSAGE SAID WAS

7 FRESH IN YOUR MIND?

8 A. UH -- THE WAY I DID THIS IS I TALKING TO MYSELF ON
9 THAT, AND I RECORD BACK WHATEVER THE MESSAGE THAT THEY LEFT ON
10 THE PHONE.

11 Q. IN OTHER WORDS, YOU LISTENED TO THE VOICEMAIL AND
12 CONTEMPORANEOUSLY DICTATED WHAT YOU HEARD ON THE TAPE INTO
13 ANOTHER TAPE. IS THAT WHAT YOU DID?

14 A. NO. THIS IS THE ACTUAL MESSAGE MR. SANGIACOMO LEFT
15 ON THE PHONE.

16 Q. RIGHT.

17 A. THEN I JUST --

18 Q. YOU LISTENED TO THAT?

19 A. RIGHT.

20 Q. AS YOU LISTENED TO THAT, WHAT DID YOU DO, DID YOU
21 WRITE IT DOWN, RECORD IT ON ANOTHER TAPE RECORDER, YOUR VOICE,
22 WHAT DID YOU DO?

23 A. I JUST RECORDED, SO THE MESSAGE IS THE PURPOSE OF WHY
24 I KEPT THE MESSAGE FROM HIM, SO I RECORD MY VOICE MYSELF.

25 Q. I UNDERSTAND THAT. I'M SIMPLY, YOU'RE GETTING AHEAD
26 OF ME, I THINK. I'M JUST TRYING TO UNDERSTAND MECHANICALLY
27 THE PROCESS THAT YOU USED TO GO FROM THE VOICEMAIL MESSAGE TO
28 THIS DOCUMENT.

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1 I WANT YOU TO TELL US THE STEPS THAT YOU TOOK
2 STARTING WITH THE VOICEMAIL MESSAGE ON YOUR TAPE MACHINE OR
3 WHATEVER KIND OF MACHINE IT WAS, HOW IT WOUND UP IN THIS
4 DOCUMENT. WHAT PROCESS YOU USED, NOT WHY YOU DID IT OR WHY

5 YOU THOUGHT IT WAS IMPORTANT TO DO, JUST WHAT THE PROCESS
6 WAS.

7 A. SORRY, I MISUNDERSTAND. THIS IS THE COURT
8 TRANSCRIPT. I DIDN'T PREPARE THIS, THIS IS THE COURT
9 TRANSCRIPT PERSON DO THIS, SO THEY MUST HAVE LISTENED TO THE
10 TAPE AND TRANSFERRED IT.

11 Q. BUT WHAT'S A LITTLE BIT CONFUSING, AT LEAST TO ME,
12 IS, WHETHER IT'S TWO TAPES, AND THE ORIGINAL VOICEMAIL TAPE
13 WHEN YOU THEN LISTENED TO AND DICTATED INTO THAT SECOND TAPE,
14 OR -- LOOK, IF YOU LOOK AT THE EXHIBIT, ON LINE EIGHT IT SAYS,
15 THIS IS THE MESSAGE, GET CALL FROM MIKE SANGIACOMO. DO YOU
16 SEE THAT?

17 A. YES.

18 Q. WELL, THAT WASN'T PART OF THE ORIGINAL VOICEMAIL
19 MESSAGE, CORRECT, THAT'S YOU SPEAKING?

20 A. THAT'S CORRECT.

21 Q. SO HOW DID THE VOICEMAIL MESSAGE WIND UP WITH A
22 STATEMENT OF YOURS ON THE TAPE?

23 A. I'M NOT CLEAR HOW I CAN EXPLAIN IT, BUT IT SOUNDS
24 LIKE HOW DOES MY VOICE END UP ON THE TAPE --

25 Q. LET'S TRY IT ANOTHER WAY. YOU GOT THAT PHONE CALL
26 FROM MIKE SANGIACOMO ON THE AFTERNOON OF DECEMBER 11, 2000,
27 CORRECT?

28 A. YES.

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1 Q. AND IT HAD TO DO WITH SIGNING THIS NEUTRALITY
2 AGREEMENT WITH TEAMSTER'S LOCAL 350, CORRECT?

3 A. YES.

4 Q. HE LEFT THAT MESSAGE INITIALLY, YOU DIDN'T TAKE THE
5 CALL RIGHT AWAY, RIGHT?

6 A. YES.

7 Q. NOW, YOU LISTENED TO THAT MESSAGE, YOU PLAYED IT
8 BACK, RIGHT?

9 A. YES.

10 Q. WHEN YOU PLAYED THAT MESSAGE BACK, DID IT START OUT
11 ON THE VOICEMAIL, DID IT START OUT BY SAYING, THIS IS THE
12 MESSAGE, GET CALL FROM MIKE SANGIACOMO, WAS THAT ON THE
13 ORIGINAL VOICEMAIL MESSAGE?

14 A. NO.

15 Q. HOW DID THAT WIND UP IN THE TRANSCRIPT?

16 A. THAT'S WHAT I WAS TRYING TO EXPLAIN.

17 Q. THAT'S WHAT WE WOULD LIKE TO HEAR.

18 A. THE MESSAGE HAD BEEN CALLED IN AND LEFT ON MY OFFICE
19 PHONE NUMBER.

20 Q. RIGHT.

21 A. I'M TRYING TO KEEP THE MESSAGE AS AN EVIDENCE OF WHAT
22 WE AGREED WITH MR. SANGIACOMO.

23 Q. I UNDERSTAND.

24 A. SO I USE A TAPE RECORDER, AND THEN I RECORDED FIRST
25 MYSELF. I SAID, THIS IS THE MESSAGE THAT LEFT FROM
26 MR. SANGIACOMO AT WHAT TIME. AND AFTER I SPOKE, THEN I PLAYED
27 THE MESSAGE FROM THE PHONE, AND THEN IT'S RECORDING DIRECT
28 FROM THE TIME HE RECORDED IT ONTO THE TAPE, AND I KEPT THAT

1 TAPE.

2 Q. OKAY. SO WHAT YOU' RE SAYING IS YOU PLAYED BACK THE
3 VOICEMAIL MESSAGE, CORRECT?

4 A. YES.

5 Q. YOU RECORDED THE PLAYBACK ONTO ANOTHER TAPE RECORDER?

6 A. YES.

7 Q. AND YOU, BEFORE DOING THAT, YOU RECORDED THIS LITTLE
8 INTRODUCTION TO EXPLAIN TO THE LISTENER WHAT THE RECORDING WAS
9 OF?

10 A. YES.

11 Q. OKAY.

12 A. SORRY.

13 Q. OKAY. AND THEN YOU TOOK THIS TAPE RECORDING THAT YOU
14 MADE AND GAVE IT TO YOUR LAWYER, MR. NORRIS, CORRECT?

15 A. YES.

16 Q. AND HE HAD IT TRANSCRIBED, IS THAT WHAT HAPPENED?

17 A. YES.

18 Q. AND THAT RESULTED IN EXHIBIT 86?

19 A. YES.

20 Q. OKAY. DO YOU BELIEVE THAT THIS TRANSCRIPT IS
21 ACCURATE?

22 A. YES.

23 Q. OKAY. SO, BY THE WAY, WHAT HAPPENED TO YOUR TAPE
24 RECORDING, DO YOU STILL HAVE IT?

25 A. NOT THE TAPE RECORDER, BUT THE TAPE, YES.

26 Q. YOU HAVE THE TAPE?

27 A. YES.

28 Q. SO COULD YOU READ FOR US WHAT THIS TRANSCRIPT SAYS

1 ABOUT THE FIRST VOICEMAIL, STARTING WITH LINE EIGHT ON PAGE
2 ONE. READ THAT SLOWLY FOR THE REPORTER.

3 A. LINE EIGHT. MR. DAVID DUONG. THIS IS THE MESSAGE.
4 GET CALL FROM MIKE SANGIACOMO ON DECEMBER 11 AT
5 2:00 P.M. THAT IS, WE ASK MIKE SANGIACOMO BECAUSE BILL JONES
6 IS PUSHING US SO HARD TO SIGN THE AGREEMENT NOW WITH THE
7 TEAMSTERS. SO WE ASK, WE DON'T HAVE ENOUGH TIME TO GET
8 SANGIACOMO TO SIGN PAPER TO AGREE TO PROTECT US ON THIS IN THE
9 FUTURE IF THERE IS ANY INCREASE OF THE COST TO PROCESS SANTA
10 CLARA MATERIAL IN SAN JOSE IF THE TEAMSTERS WON'T ALLOW US TO
11 MOVE INTO OAKLAND TO PROCESS THE SANTA CLARA MATERIAL.

12 AND SANGIACOMO CALL BACK AND LEAVE A MESSAGE. HE
13 SAID HE AGREED TO DO THAT, TO HELP US ON THAT, TO DEAL WITH
14 THE TEAMSTERS, TO MAKE TEAMSTERS, YOU KNOW, ALLOW US TO MOVE
15 US OR THEY GOING TO PAY THE COST ON TOP OF THIS.

16 Q. THAT'S ALL YOUR INTRODUCTION TO THE MESSAGE, RIGHT?

17 A. YES.

18 Q. I WANT TO ASK YOU A COUPLE OF QUESTIONS ABOUT YOUR
19 INTRODUCTION. YOU MADE THIS TO HAVE A RECORD OF WHAT WAS
20 HAPPENING THAT DAY, RIGHT?

21 A. YES.

22 Q. THAT'S BECAUSE YOU WERE, AND WHY DID YOU WANT TO MAKE
23 A RECORD OF WHAT WAS HAPPENING THAT DAY?

24 A. I MAKE A RECORD OF THIS BECAUSE ON THAT DAY I HAVE TO
25 SIGN THE AGREEMENT.

26 Q. THE NEUTRALITY AGREEMENT?

27 A. YES. NORCAL WANTED TO SIGN ON THAT DAY RIGHT AWAY
28 FOR THE NEXT DAY COUNCIL MEETING.

1 Q. SO THIS WAS THE DAY BEFORE THE SECOND AND FINAL VOTE
2 BY THE CITY COUNCIL ON THE NORCAL CONTRACT?

3 A. YES.

4 Q. LET ME ASK YOU A FEW MORE QUESTIONS ABOUT THIS
5 INTRODUCTION. IS IT TRUE, AS YOU RECORD HERE, THAT BILL JONES
6 WAS PUSHING YOU HARD TO SIGN THE AGREEMENT?

7 A. YES.

8 Q. AND YOU RECOLLECT THAT?

9 A. YES.

10 Q. LET ME SEE IF I CAN SORT OF SHORTCUT THIS. DID
11 NORCAL OFFER YOU SOME INDUCEMENTS OTHER THAN REIMBURSEMENT FOR
12 THE EXTRA COST OF USING TEAMSTERS TO SIGN THIS NEUTRALITY
13 AGREEMENT ON DECEMBER 11?

14 A. (NO RESPONSE.)

15 Q. LET ME BREAK THAT QUESTION DOWN. I THINK -- YOU
16 WANTED TO BE REIMBURSED FOR THE ADDITIONAL COST OF SWITCHING
17 FROM ILWU WORKERS TO TEAMSTERS, RIGHT?

18 A. YES.

19 Q. ON OCTOBER 9, 2000, NORCAL SIGNED AN ADDENDUM
20 PROMISING TO DO THAT, RIGHT?

21 A. YES.

22 Q. BUT YOU STILL WEREN'T WILLING TO SIGN THE NEUTRALITY
23 AGREEMENT WITH THE TEAMSTERS, RIGHT, JUST BASED ON THE
24 ADDENDUM?

25 A. YES.

26 Q. YOU WANTED SOME ADDITIONAL CONSIDERATION IN ORDER TO
27 SIGN THAT NEUTRALITY AGREEMENT; IS THAT CORRECT?

28 A. YES.

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1 Q. WHAT WAS THAT ADDITIONAL CONSIDERATION?

2 A. BECAUSE THE AGREEMENT WAS SIGNED ON THE NINTH, IT
3 JUST FOR THE SAN JOSE MATERIAL IS GOING TO BE PROCESSED AND
4 THE DIFFERENCE WILL BE PAID BY NORCAL.

5 Q. RIGHT.

6 A. BUT IN OUR CONTRACT WITH NORCAL, WE ALSO GOING TO
7 PROCESS THE SEVEN CITIES IN SANTA CLARA COUNTY THAT NORCAL
8 COLLECTING THE MATERIAL.

9 Q. FROM OUTSIDE SAN JOSE?

10 A. YES.

11 Q. AND YOU REFER TO THAT AS THE SANTA CLARA MATERIAL?

12 A. CORRECT.

13 Q. SO YOU WERE CONCERNED ABOUT THE TEAMSTERS COSTING CWS
14 MORE MONEY TO PROCESS THE SANTA CLARA MATERIAL IF YOU SIGNED
15 THIS AGREEMENT WITH THE TEAMSTERS?

16 A. THAT'S CORRECT.

17 Q. AND WHAT DID YOU WANT NORCAL TO DO ABOUT THAT IN
18 ORDER FOR CWS TO SIGN THE NEUTRALITY AGREEMENT?

19 A. AT THAT TIME, BECAUSE NORCAL CLAIM IT'S NOT GOING TO
20 HAVE RELATIONSHIP WITH TEAMSTERS, SO WE ASK THEM THAT EITHER
21 THEY ALLOW US TO PROCESS THE SANTA CLARA MATERIAL IN THE
22 DIFFERENT CITY WITH DIFFERENT UNION OR DIFFERENT GRADE.

23 Q. IN OTHER WORDS, YOU WERE PROPOSING, ONE POSSIBILITY
24 WOULD BE YOU WOULD HAVE MULTIPLE SHIFTS AT THE SAN JOSE PLANT,
25 ONE SHIFT WOULD WORK ON SAN JOSE MATERIAL, A DIFFERENT SHIFT

- 26 WOULD WORK ON SANTA CLARA MATERIAL; IS THAT CORRECT?
27 A. CORRECT. THAT'S ONE OF THE PROPOSALS.
28 Q. AND IN THAT PROPOSAL, DID YOU CONTEMPLATE THAT THE

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- 1 SECOND SHIFT WHO WORKED ON THE SANTA CLARA MATERIAL WOULD BE
2 DIFFERENT EMPLOYEES?
3 A. THAT'S CORRECT.
4 Q. AND THOSE WOULD BE ILWU EMPLOYEES?
5 A. THAT'S CORRECT.
6 Q. DID YOU HAVE AN ALTERNATIVE PROPOSAL TO NORCAL?
7 A. YES.
8 Q. WHAT WAS THE NEXT PROPOSAL?
9 A. THE NEXT PROPOSAL IS IF THEY CANNOT GET THE TEAMSTERS
10 TO AGREE TO DO THAT, THEN NORCAL WILL ALLOW US TO EITHER TAKE
11 MATERIAL TO OAKLAND, SANTA CLARA MATERIAL TO OAKLAND SO WE CAN
12 PROCESS IN OAKLAND UNDER ILWU'S CONTRACT.
13 Q. OKAY.
14 A. OR ALLOW US TO SUBCONTRACT THAT MATERIAL TO
15 TRANSFER --
16 Q. IN OTHER WORDS, YOU HAD SEVERAL ALTERNATIVE PROPOSALS
17 TO NORCAL. NORCAL COULD GET THE TEAMSTERS TO AGREE TO A
18 SECOND SHIFT AT THE SAN JOSE PLANT, STAFFED WITH ILWU WORKERS,
19 THAT WAS ONE PROPOSAL, RIGHT?
20 A. YES.
21 Q. ANOTHER PROPOSAL WAS PROCESS THE SANTA CLARA MATERIAL
22 AT THE OAKLAND FACILITY INSTEAD OF SAN JOSE, RIGHT?
23 A. CORRECT.

24 Q. AND THE THIRD PROPOSAL WAS YOU WOULD SORT OF, I GUESS
25 YOU CALL IT TRANS-SHIP OR RESELL THE SANTA CLARA MATERIAL TO A
26 DIFFERENT RECYCLABLE PROCESSOR, RIGHT?

27 A. NO, THAT'S PART OF THE TRANSLOAD.

28 Q. THAT'S WHAT YOU MEAN BY TRANSLOAD?

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1 A. YES, BECAUSE THE SMART TRUCK COLLECTION CANNOT TAKE
2 THE MATERIAL ALL THE WAY TO OAKLAND, SO THAT ALLOWS YOU TO
3 PROCESS IN OAKLAND BY ALLOWING US TO TRANSFER MATERIAL AT SOME
4 OTHER AREA, SOME OTHER FACILITY.

5 THE THIRD ONE IS BECAUSE 505 BURKE STREET ORIGINALLY
6 THAT NORCAL PROPOSE TO MAKE, BOUGHT THAT FACILITY FOR SAN JOSE
7 BIDDING PROCESS. WE PROPOSE THAT CITY OF SAN JOSE GOING TO DO
8 GREEN WASTE FOR CITY OF SAN JOSE IF WE CAN USE BURKE STREET
9 FOR A TRANSFER, GREEN WASTE, BECAUSE GREEN WASTE HAVE TO
10 DELIVER TO GILROY.

11 SO WE CAN TRANSLOAD THERE, USING OUR FACILITY TO
12 TRANSLOAD SO WE CAN CHARGE NORCAL ON TRANSLOAD, SO THE COST OF
13 CHARGING THEM THERE CAN SUBSIDIZE FOR THE COST THAT WE HAVE TO
14 PAY TEAMSTER AT SAN JOSE FACILITY. IF WE PROCESS SANTA CLARA
15 MATERIAL AT SAN JOSE, AT THE SAME TIME WE USE TEAMSTER.

16 Q. OKAY. YOU'VE TOLD US ABOUT THE INTRODUCTION AND
17 ABOUT THE BACKGROUND OF THE MESSAGE. CAN YOU NOW READ THE
18 NEXT PORTION OF THE MESSAGE FOR US? THIS IS THE ACTUAL
19 VOICEMAIL LEFT ON YOUR SYSTEM BY MR. SANGIACOMO, CORRECT?

20 A. YES.

21 Q. AND --

- 22 A. IT'S 2:43 P.M. I DIDN'T RECORD IT, THIS IS A
23 MESSAGE.
24 Q. THIS IS WHAT YOU BELIEVE TO BE ON THE ACTUAL
25 VOICEMAIL?
26 A. YES.
27 Q. OKAY.
28 A. MR. SANGIACOMO, FROM HIM.

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- 1 DAVID: MIKE SANGIACOMO. I FINALLY SPOKE WITH
2 BILL. NOTHING HAS CHANGED FROM WHAT WE TALKED ABOUT
3 ON FRIDAY. WE WILL WORK WITH YOU AND PROTECT YOU AS
4 BEST WE CAN. IN THE MEANTIME, WE DO NEED TO GET
5 THAT LETTER OFF TO THE CITY COUNCIL. SO IF YOU ARE
6 AROUND AND CAN EXECUTE THAT THIS MORNING, FAX IT
7 BACK TO BILL JONES, AND WE WILL GREATLY APPRECIATE
8 IT. OTHERWISE, WE WON'T HAVE TO, WE WON'T HAVE A
9 PURPOSE FOR GOING TO A MEETING TOMORROW. I WILL TRY
10 YOU AGAIN ON YOUR CELL PHONE TOO, JUST IN CASE.
11 Q. WHAT DID YOU THINK OR UNDERSTAND THAT MR. SANGIACOMO
12 MEANT WHEN HE SAID OTHERWISE WE WON'T HAVE A PURPOSE FOR GOING
13 TO A MEETING TOMORROW?
14 A. MY MEMORY IS HE TALK ABOUT THE CITY COUNCIL MEETING.
15 Q. AND SO WHY WOULDN'T THERE BE A PURPOSE TO GO TO THE
16 CITY COUNCIL MEETING ON THE NEXT DAY UNLESS YOU SIGNED A
17 NEUTRALITY AGREEMENT?
18 A. MY RECALL IS HE SAID IF WE DON'T SIGN THIS, NORCAL
19 CANNOT GET APPROVAL FROM THE CITY COUNCIL FOR THE CONTRACT.

20 Q. OKAY. AND DID HE EXPLAIN WHY HE BELIEVED THAT?
21 A. YES, HE SAY THAT THE TEAMSTER WILL WORK WITH POLITICO
22 TO STOP --
23 Q. WAIT A MINUTE. DID HE SAY POLITICAL OR POLITICO?
24 A. POLITICO.
25 Q. POLITICO?
26 A. POLITICO, MEANING --
27 Q. ELECTED OFFICIALS?
28 A. YES. THE TEAMSTERS WILL WORK WITH THE POLITICOS TO

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1 STOP THE VOTING.
2 Q. THE TEAMSTERS WOULD WORK WITH THE POLITICOS TO STOP
3 THE CONTRACT?
4 A. YES.
5 Q. LET ME ASK YOU THIS. BILL JONES, AS I UNDERSTAND IT,
6 HAD BEEN WORKING WITH YOU TO GET YOU TO SIGN THIS NEUTRALITY
7 AGREEMENT, CORRECT?
8 A. YES.
9 Q. SO WHY IS IT THAT MR. SANGIACOMO IS CALLING YOU AND
10 LEAVING THIS MESSAGE?
11 A. BECAUSE I ALWAYS DEALING WITH MR. SANGIACOMO, AND I
12 DIDN'T TRUST BILL.
13 Q. WHY IS THAT?
14 A. I DIDN'T WORK WITH HIM. ORIGINALLY WE CONTRACT
15 BETWEEN CWS AND NORCAL, WE ALWAYS WORK DIRECTLY WITH
16 MR. SANGIACOMO, AND BILL JONES IS JUST SOMEBODY THAT I JUST
17 KNOW IN THE LAST MINUTE, SO I DIDN'T GET THE CHANCE TO KNOW

18 BILL WELL, THAT'S WHY.

19 Q. HAD, PRIOR TO THIS PHONE MESSAGE HAD BILL JONES BEEN
20 TRYING TO GET YOU TO SIGN THE NEUTRALITY AGREEMENT?

21 A. YES.

22 Q. AND WHAT HAD HE DONE TO TRY TO GET YOU TO SIGN THE
23 NEUTRALITY AGREEMENT?

24 A. HE'S PUSHING BY SAYING, YOU DON'T SIGN IT, WE CAN'T
25 GET THE CONTRACT SIGNED. WE HOLD YOU ACCOUNTABLE FOR IT IF WE
26 DON'T GET THE CONTRACT, AND ALL KIND OF THINGS. HE'S PUSHING,
27 EVERY PHONE CALL HE JUST WANT ME TO SIGN RIGHT AWAY JUST LIKE
28 WE WORK 40 --

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1 Q. DID YOU SAY HE WAS PUSHING YOU?

2 A. YEAH. NOT LIKE PUSHING, BUT, HEY, I NEED THIS RIGHT
3 AWAY, YOU NEED TO SIGN THIS.

4 Q. SO THEN WAS THERE A SECOND MESSAGE LEFT BY
5 BILL JONES?

6 A. YES.

7 Q. AND DID YOU RECORD SOME INTRODUCTION TO THAT MESSAGE
8 STARTING AT LINE 14?

9 A. YES.

10 Q. COULD YOU NEXT READ TO US, SLOWLY, THE INTRODUCTION?

11 A. DAVID DUONG. OKAY.

12 WHAT WE DISCUSSED ON LAST FRIDAY, THAT'S
13 SOMETHING THEY ARE GOING TO GIVE US. THE GREEN
14 WASTE WILL BE TRANSFERRED AT OUR SITE ON 505 BURKE
15 STREET WITH THE PROCESSING OF SANTA CLARA MATERIAL

16 THERE. THAT'S IF WE EITHER GO ON THAT SITE WITH
17 NONUNION OR IT IS GOING TO BE UNION OR LOCAL 6. AND
18 THAT'S, WE ARE GOING TO FIND A NEW SITE TO PROCESS
19 SAN JOSE MATERIAL. AND NEW SITE, AND THAT SITE,
20 PROBABLY WE ARE GOING TO GO WITH TEAMSTER, AND
21 THAT'S WHAT NORCAL WILLING TO GIVE US. A NEW
22 CONTRACT ON TRANSFERRING THE GREEN WASTE OR THEY
23 GOING TO PROTECT US, THE PRICE, IF THERE IS AN
24 INCREASE OF PRICE FOR PROCESSING SANTA CLARA
25 MATERIAL IN SAN JOSE AT THE SITE.

26 Q. SO THIS WAS YOUR EFFORT TO RECORD AND DOCUMENT WHAT
27 YOU UNDERSTOOD THE DEAL TO BE?

28 A. YES.

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1 Q. AFTER THAT, WE HAVE A TRANSCRIPT OF MR. JONES'
2 VOICEMAIL MESSAGE, IS THAT CORRECT?

3 A. YES.

4 Q. AND CAN YOU READ THAT NEXT SECTION FOR US?

5 A. YES.

6 4:00 P.M. MR. JONES. HI, DAVID, BILL JONES.
7 408-588-7207. I TALKED TO MIKE AND I WAS CALLING TO
8 SEE IF HE HAD CALLED YOU BACK. I'M EXPECTING THE
9 FAX IN MY OFFICE, 408-969-0340 IS THE FAX NUMBER,
10 AND THAT IS 408-969-0340. AND WE NEED TO GET THAT
11 OFF AS SOON AS WE CAN. THANK YOU, BYE.

12 Q. BASED ON YOUR RECOLLECTION, YOU BELIEVE THAT TO BE
13 WHAT MR. JONES LEFT A VOICEMAIL MESSAGE FOR YOU; IS THAT

- 14 CORRECT?
- 15 A. YES.
- 16 Q. THAT WOULD HAVE BEEN, AGAIN, ON DECEMBER 11 AT 4:00
- 17 P. M. ?
- 18 A. YES.
- 19 Q. NOW, IS THERE ANOTHER, THIRD AND FINAL VOICEMAIL
- 20 MESSAGE ON THIS EXHIBIT?
- 21 A. YES.
- 22 Q. AND WAS THIS ON, THIS WAS AT MONDAY AT 1:58 P. M. ?
- 23 A. YES.
- 24 Q. SO APPARENTLY WE READ THE MESSAGES IN REVERSE ORDER.
- 25 WE STARTED WITH THE LAST MESSAGE, AND THIS IS ACTUALLY THE
- 26 FIRST MESSAGE THAT DAY, CORRECT?
- 27 A. YES.
- 28 Q. CAN YOU READ THIS MESSAGE FOR US, PLEASE?

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- 1 A. YES. 1:58 P. M. , MR. JONES.
- 2 DAVID: BILL JONES. I JUST TALKED TO MIKE, AND
- 3 HE TOLD ME HE WAS GOING TO CALL YOU AND THAT YOU
- 4 WOULD BE SENDING ME THE FAX. THIS IS ALMOST 2:00
- 5 P. M. I NEED TO GET AHOLD OF THAT SO I CAN
- 6 DISTRIBUTE IT. I WILL TRY THE OFFICE.
- 7 408-588-7207. BYE.
- 8 Q. OKAY. AND DO YOU KNOW WHO HE WANTED TO DISTRIBUTE
- 9 THE NEUTRALITY AGREEMENT TO?
- 10 A. NO.
- 11 Q. OKAY. IF YOU COULD HAVE HAD IT YOUR WAY, WOULD YOU

12 HAVE WANTED TO SIGN WITH THE TEAMSTERS IN THIS CONTRACT?
13 A. IF I HAVE IT MY WAY, I WILL HONOR THE CONTRACT WE
14 HAVE WITH ILWU.
15 Q. THAT'S THE EXISTING COLLECTIVE BARGAINING AGREEMENT?
16 A. CORRECT.
17 Q. THE ONE THAT INCLUDED THAT CONDITION THAT ANY
18 EXPANSION OF YOUR OPERATION WOULD BE GOVERNED BY THE EXISTING
19 COLLECTIVE BARGAINING AGREEMENT WITH ILWU?
20 A. CORRECT.
21 Q. OKAY.
22 A. AND OF COURSE WE HONOR THE CONTRACT BY HAVING
23 EMPLOYEE AND EMPLOYEES STILL HAVE THE RIGHT TO CHOOSE WHATEVER
24 THE UNION TO REPRESENT THEM. BUT AT LEAST I HAVE TO HONOR
25 WHAT I HAVE AGREED TO FIRST.
26 Q. RIGHT. SO IF YOU HAD IT YOUR WAY, YOU WOULD HAVE
27 STAYED WITH THE ILWU. IS THAT WHAT YOU'RE TELLING US?
28 A. YES.

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1 Q. YET YOU CHANGED TO THE TEAMSTERS, CORRECT?
2 A. I WILL CHANGE?
3 Q. EVEN THOUGH YOU WANTED TO STAY WITH THE ILWU IN
4 SAN JOSE, YOU WOUND UP GOING WITH THE TEAMSTERS IN SAN JOSE,
5 CORRECT?
6 A. THAT'S CORRECT.
7 Q. WHY WAS THAT?
8 A. BECAUSE NORCAL HAVE MADE US TO PREAGREE TO USE
9 TEAMSTERS.

10 Q. IN WHAT WAY DID NORCAL MAKE YOU PREGREE TO USE THE
11 TEAMSTERS?

12 A. THEY AGREE TO, NUMBER ONE THEY SAID WE NOT GO FOR
13 THAT, THEY CAN'T GET THE CONTRACT. IF WE DO NOT AGREE WITH
14 THE TEAMSTER. I DIDN'T KNOW WHAT BEHIND IT, BUT NUMBER TWO WE
15 GO FOR TEAMSTER BECAUSE NORCAL WILLING TO SIGN AN ADDENDUM TO
16 PAY FOR THE DIFFERENCE.

17 Q. LET ME MOVE ON TO ANOTHER TOPIC.

18 MR. FINKELSTEIN: I WILL ASK TO MARK AS EXHIBIT 87,
19 I BELIEVE, A FOUR-PAGE FAX. THE FAX IS FROM A PEPPER COLEMAN,
20 C-O-L-E-M-A-N, TO SUSAN DEVENCENZI. IT'S DATED OCTOBER 23,
21 2000, AND THE FAX TIME STAMP SHOWS 1:37 P.M.

22 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
23 JURY EXHIBIT 87.)

24 THE FOREPERSON: SO MARKED.

25 BY MR. FINKELSTEIN:

26 Q. MR. DUONG, CAN YOU LOOK AT EXHIBIT 87 PLEASE, AND
27 TELL US IF YOU KNOW WHAT THAT EXHIBIT IS AND IF YOU WANT TO
28 LOOK AT ALL FOUR PAGES. GO AHEAD, TAKE YOUR TIME.

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1 A. YES.

2 Q. DO YOU KNOW WHAT EXHIBIT 87 IS?

3 A. YES.

4 Q. WHAT IS IT?

5 A. A FAX FROM PEPPER COLEMAN, WHO WORK FOR CWS, FAXING
6 THIS DOCUMENT TO THE DEPARTMENT OF ENVIRONMENTAL SERVICES.

7 Q. ACTUALLY, MISS DEVENCENZI IS A LAWYER FOR THE CITY OF

- 8 SAN JOSE. HAVE YOU EVER MET HER OR SPOKEN WITH HER?
- 9 A. YES.
- 10 Q. OKAY. AND YOU BELIEVE THIS WAS FAXED TO THE
- 11 DEPARTMENT OF ENVIRONMENTAL SERVICES, NOT MISS DEVENCENZI'S
- 12 OFFICE?
- 13 A. WELL, I DIDN'T KNOW WHO SHE WAS BEFORE, I ONLY KNOW
- 14 HER FOR THE LAST COUPLE OF YEARS.
- 15 Q. OKAY. LET ME START WITH THIS. THE FAX COVER SHEET
- 16 SAYS THAT THIS IS BEING FAXED PER YOUR INSTRUCTIONS. IS THAT
- 17 TRUE, YOU ASKED MISS COLEMAN TO FAX THESE DOCUMENTS OVER TO
- 18 THE CITY?
- 19 A. THE FAX SAY THAT, YES. IT MUST BE TRUE.
- 20 Q. YOU BELIEVE IT TO BE TRUE?
- 21 A. YES.
- 22 Q. LET'S LOOK AT, THE FIRST DOCUMENT AFTER THE COVER
- 23 SHEET IS A COPY OF AN OCTOBER 20, 1998 LETTER FROM YOU TO
- 24 ROBERTO FLOTTE CONTAINING SOME AGREEMENT ABOUT ILWU COLLECTIVE
- 25 BARGAINING AGREEMENT BEING APPLICABLE TO ANY EXPANSION OF YOUR
- 26 BUSINESS, CORRECT?
- 27 A. YES.
- 28 Q. AND SO THIS IS THE PART OF THE COLLECTIVE BARGAINING

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- 1 AGREEMENT THAT REQUIRED CWS TO USE ILWU WORKERS IN SAN JOSE,
- 2 CORRECT?
- 3 A. YES.
- 4 Q. THEN YOU ALSO FAXED IN THIS TRANSMISSION A COPY OF
- 5 YOUR OCTOBER 4, 2000 LETTER TO MAYOR GONZALES, CORRECT?

- 6 A. YES.
- 7 Q. YOU ALSO INCLUDED AN OCTOBER 9, 2000 LETTER TO MAYOR
8 GONZALES WHICH TALKS ABOUT YOU PAYING WAGES AND BENEFITS AT
9 LEAST EQUIVALENT TO THE EXISTING WAGES AND BENEFITS, CORRECT?
- 10 A. YES.
- 11 Q. WHY DID YOU ASK PEPPER COLEMAN TO FAX THESE DOCUMENTS
12 TO THE CITY ON OCTOBER 23 -- STRIKE THAT. LET ME SET THE
13 BACKGROUND UP.
- 14 WE KNOW THAT ON OCTOBER 9, 2000 YOU SIGNED THIS
15 ADDENDUM AGREEMENT WITH CWS, RIGHT?
- 16 A. WITH NORCAL.
- 17 Q. I'M SORRY, WITH NORCAL. RIGHT?
- 18 A. YES.
- 19 Q. BUT YOU HAD NOT YET SIGNED THE NEUTRALITY AGREEMENT
20 WITH THE TEAMSTERS.
- 21 A. YES, CORRECT.
- 22 Q. YOU DIDN'T WANT TO SIGN THE NEUTRALITY WITH THE
23 TEAMSTERS, RIGHT?
- 24 A. CORRECT.
- 25 Q. YOU DIDN'T SIGN THE NEUTRALITY AGREEMENT UNTIL
26 DECEMBER 11, 2000, THE DAY BEFORE THE SECOND AND FINAL COUNCIL
27 VOTE, CORRECT?
- 28 A. CORRECT.

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- 1 Q. SO THIS LETTER, THIS FAX TRANSMISSION OF OCTOBER 23
2 WOULD BE BETWEEN THE FIRST AND SECOND CITY COUNCIL VOTES,
3 CORRECT?

4 A. CORRECT.

5 Q. AFTER YOU SIGNED THE ADDENDUM, BUT BEFORE YOU SIGNED

6 THE NEUTRALITY AGREEMENT?

7 A. CORRECT.

8 Q. SO WHY DID YOU ASK YOUR OFFICE TO FAX THESE DOCUMENTS

9 OVER TO THE, CITY WHICH INCLUDED YOUR AGREEMENT WITH ILWU TO

10 USE THEIR WORKERS IN SAN JOSE?

11 A. THIS IS PROBABLY THE FAX WHEN WE SIGN THE AGREEMENT

12 WITH NORCAL. WE HAVE TO NOTIFY THE CITY THAT WE PAY AT LEAST

13 PREVAI LING WAGE.

14 Q. YOU MEAN EXI STING WAGE?

15 A. YES.

16 Q. IT WASN' T PREVAI LING WAGE, BECAUSE PREVAI LING WAGE

17 DIDN' T COVER THE MRF WORKERS, RIG HT?

18 A. THAT' S CORRECT.

19 Q. YOU' RE TALKING ABOUT EXI STING WAGE, NOT PREVAI LING

20 WAGE. SO I UNDERSTAND THAT, BUT WHY I INCLUDE A LETTER THAT

21 SUGGESTS YOU HAVE TO USE ILWU WORKERS AND NOT TEAMSTERS? WHAT

22 WAS YOUR PURPOSE IN INCLUDING THAT LETTER?

23 A. IF I RECALL, THIS IS THE PURPOSE OF TELLING WE

24 UNIONIZED AND THAT IS WHAT WE WANT TO TELL THE CITY.

25 Q. WHEN YOU SAY UNI ONIZED, YOU MEAN UNI ONIZED WITH THE

26 ILWU?

27 A. THAT' S CORRECT. THAT' S WHY WE SENT IT.

28 Q. BUT YOU KNEW ON OCTOBER 23, BASED ON YOUR

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1 CONVERSATI ON WITH SANGI ACOMO, AT LEAST, AND BILL JONES

2 POSSIBLY, CORRECT, THAT THE CITY, THAT SOMEONE IN THE CITY AT
3 LEAST THOUGHT YOU SHOULD USE TEAMSTERS AND NOT ILWU WORKERS,
4 RIGHT?

5 A. RIGHT.

6 Q. WERE YOU TRYING TO SUGGEST TO THE CITY THAT YOU
7 COULDN'T USE TEAMSTER WORKERS BECAUSE YOU HAD A PREEXISTING
8 AGREEMENT WITH THE ILWU?

9 A. (NO RESPONSE.)

10 Q. ONLY YOU KNOW THE ANSWER, NO ONE ELSE IN THE ROOM
11 KNOWS THE ANSWER. IF YOU DON'T REMEMBER, THAT'S FINE TOO.

12 A. THAT'S ONE THING I WANT TO SAY, I DON'T REMEMBER WHEN
13 I SEE THIS FAX, I DIDN'T KNOW SUSAN DEVENCENZI AND WHY THIS IS
14 GOING TO HER. I CAN'T REMEMBER WHY, MAYBE THIS IS A GIVEN TO
15 US BY NORCAL AND WE HAVE TO FAX IT TO THEM OR MAYBE WHY IT'S
16 GOING TO THEM OR WHY IT'S GOING OUT -- I CAN'T RECALL.

17 Q. LET ME SEE IF I CAN JOG YOUR MEMORY, AND ONLY YOU
18 KNOW IF YOUR MEMORY IS REFRESHED OR NOT. I WILL SHOW YOU
19 ANOTHER EXHIBIT.

20 MR. GIBBONS-SHAPIRO: EXHIBIT 20.

21 BY MR. FINKELSTEIN:

22 Q. WHY DON'T YOU TAKE A LOOK AT EXHIBIT 20. HAVE YOU
23 SEEN THAT DOCUMENT BEFORE?

24 A. I'M LOOKING TO SEE IF I'VE SEEN IT.

25 Q. OKAY. LET ME DIRECT YOUR ATTENTION TO A PARAGRAPH IN
26 THIS DOCUMENT. IT'S ON PAGE TWO, IT STARTS OUT, A CITY
27 REQUIREMENT THAT PROPOSES ENTERING INTO A NEUTRALITY
28 AGREEMENTS OR AGREE TO NEUTRALITY PROVISIONS RAISES VERY

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1 SERIOUS LEGAL CONCERNS ON TWO LEVELS. DO YOU SEE THAT?

2 A. YES.

3 Q. AND THEN IT TALKS ABOUT FEDERAL LABOR LAW PROHIBITING
4 A CITY FROM INTERFERING WITH THE COLLECTIVE BARGAINING PROCESS
5 REGULATED BY FEDERAL LAW. DO YOU SEE THAT?

6 A. YES.

7 Q. IN THE NEXT PARAGRAPH, IT TALKS ABOUT CWS CURRENTLY
8 REPRESENTED BY A LABOR ORGANIZATION. DO YOU SEE THAT?

9 A. YES.

10 Q. AND IT GOES ON TO SAY, AS SUCH, THERE IS LITTLE CITY
11 BUSINESS INTEREST OR JUSTIFICATION IN REQUIRING NEUTRALITY
12 AGREEMENTS IN THIS CASE. DO YOU SEE THAT?

13 A. YES.

14 Q. NOW, THIS DOCUMENT IS JUST FOUR DAYS AFTER YOUR
15 OCTOBER 23 FAX, RIGHT, THIS IS DATED OCTOBER 27, YOUR FAX IS
16 OCTOBER 23.

17 A. YES.

18 Q. ONLY YOU KNOW THE ANSWER TO MY QUESTION. IS THAT
19 JUST COINCIDENCE, OR COULD IT BE THAT MISS DEVENCENZI FROM THE
20 CITY ATTORNEY'S OFFICE WANTED TO KNOW WHAT YOUR CONTRACTUAL
21 ARRANGEMENTS WITH YOUR CURRENT LABOR UNION WAS, IF YOU
22 REMEMBER?

23 A. NO, I DON'T.

24 Q. OKAY. SO JUST -- ALL RIGHT. I DON'T WANT TO BELABOR
25 THE POINT. YOU HAD YOUR OFFICE SEND THAT FAX, WHICH I INCLUDED
26 A COPY OF YOUR 1998 AGREEMENT WITH THE, LETTER AGREEMENT WITH
27 THE ILWU, CORRECT?

28 A. YES.

1 Q. YOU DON' T REMEMBER WHY YOU HAD YOUR OFFICE SEND THAT
2 OUT?

3 A. THAT' S CORRECT.

4 Q. OKAY. I WILL SHOW YOU ANOTHER DOCUMENT AND HAVE YOU
5 TELL US YOU RECOGNIZE IT. TAKE A LOOK AT EXHIBIT 48 AND TELL
6 US IF YOU RECOGNIZE THIS DOCUMENT.

7 A. YES, I RECOGNIZE IT.

8 Q. WHAT IS THAT, EXHIBIT 48?

9 A. THIS IS THE SECOND ADDENDUM TO THE SUBCONTRACT.

10 Q. SO THIS IS A SECOND AMENDMENT TO YOUR CONTRACT WITH
11 NORCAL RELATING TO THE RECYCLING SERVICES IN SAN JOSE?

12 A. YES.

13 Q. AND WHY DID YOU AND NORCAL ENTER INTO THIS? FIRST OF
14 ALL, WAS IT ENTERED INTO ON MARCH 11, 2004 AS THE DOCUMENT
15 SAYS?

16 A. YES.

17 Q. AND WHY DID YOU ENTER INTO THIS SECOND AMENDMENT WITH
18 NORCAL, WHAT WAS THE PURPOSE OF THIS?

19 A. THIS IS THE PURPOSE OF GETTING NORCAL PAYING US FOR
20 THE DIFFERENCE OF THE LABOR COSTS THAT NORCAL HAVEN' T PAID
21 SINCE WE START PROGRAM.

22 Q. SO THIS HAS TO DO WITH THE REIMBURSEMENT FOR THE
23 EXTRA COST OF USING TEAMSTERS?

24 A. YES.

25 Q. AND IF YOU LOOK AT THE LAST PAGE OF THE DOCUMENT, NOT
26 THE LAST PAGE OF THE DOCUMENT, BUT THE SIGNATURE PAGE, DO YOU
27 KNOW WHO SIGNED ON BEHALF OF THE CWS?

28 A. MYSELF.

1 Q. AND DO YOU KNOW WHO SIGNED THIS DOCUMENT ON BEHALF OF
2 NORCAL?

3 A. MIKE SANGIACOMO.

4 Q. DO YOU RECOGNIZE THE SIGNATURE?

5 A. YES.

6 Q. OKAY. AND THE LAST PAGE OF THE DOCUMENT, DOES THIS
7 CONTAIN A SCHEDULE OF ADDITIONAL PAYMENTS?

8 A. YES.

9 Q. UNDER THIS SECOND AMENDMENT TO YOUR AGREEMENT WITH
10 NORCAL, IN THE FISCAL YEAR ENDING JUNE 30, 2003, NORCAL WAS
11 AGREEING TO PAY CWS 1.9 MILLION DOLLARS AS SOON AS POSSIBLE?

12 A. YES.

13 Q. AND THEN FOR THE NEXT FISCAL YEAR, JUNE 30, 2004,
14 2.15 MILLION DOLLARS AS SOON AS POSSIBLE; IS THAT CORRECT?

15 A. YES.

16 Q. AND THEN IN THE '05 FISCAL YEAR, 2.4 MILLION?

17 A. YES.

18 Q. IN '06 FISCAL YEAR, ANOTHER 2.4 MILLION?

19 A. YES.

20 Q. AND IN YEAR ENDING JUNE '07, ANOTHER 2.4 MILLION,
21 CORRECT?

22 A. YES.

23 Q. THESE WERE FIGURES YOU AND NORCAL AGREED UPON FOR THE
24 EXTRA COST OF USING THE TEAMSTERS; IS THAT CORRECT?

25 A. YES.

26 Q. DID NORCAL START MAKING PAYMENTS ON, AS OF THE DATE
27 OF THIS AGREEMENT, WHICH WOULD HAVE BEEN MARCH 11, 2004?

28 A. YES.

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1 Q. WHEN WAS THE FIRST PAYMENT MADE -- YOU UNDERSTAND I'M
2 NOT ASKING YOU WHEN WERE THEY SUPPOSED TO MAKE THE PAYMENTS,
3 I'M ASKING WHEN THEY ACTUALLY STARTED PAYING YOU.

4 A. I'M LOOKING TO THIS BECAUSE I DON'T THINK WE RECEIVED
5 ANY PAYMENT BEFORE WE SIGNED IT.

6 Q. RIGHT. SO MY QUESTION IS, HOW SOON AFTER THE
7 AGREEMENT WAS SIGNED WAS IT THAT NORCAL STARTED MAKING THESE
8 ADDITIONAL PAYMENTS TO CWS?

9 A. I DON'T REMEMBER HOW SOON, BUT I REMEMBER IT'S LIKE
10 VERY SOON AFTER THIS.

11 Q. ARE YOU TALKING ABOUT A FEW MONTHS, A FEW WEEKS?

12 A. YES, PROBABLY WITHIN A FEW WEEKS.

13 Q. OKAY. LET ME ASK YOU THIS: HOW MANY MRF WORKERS DID
14 YOU EMPLOY IN THE SAN JOSE FACILITY, APPROXIMATELY, AT THE
15 BEGINNING?

16 A. AT THE BEGINNING WE, AT, I THINK IT'S LIKE 50 OR
17 SOMETHING.

18 Q. 50?

19 A. YES, OR AROUND THAT.

20 Q. AND WHY ARE THE NUMBERS SO LARGE FOR 50 EMPLOYEES?
21 WHY IS THE ADDITIONAL COST SO LARGE FOR PAYING HIGHER WAGES
22 AND BENEFITS TO 50 EMPLOYEES? COULD YOU EXPLAIN THAT TO US?

23 A. WELL, I DON'T KNOW ABOUT, YOU KNOW, ALL THE DETAILS.
24 ONLY A COUPLE OF THINGS I KNOW, LIKE THE CONTRACT WITH
25 TEAMSTER, WE GET, WE PAY HIGHER WAGE, AND ALSO THERE'S A

26 GUARANTEE OF, YOU KNOW, TWO HOURS OVERTIME EVERY DAY.

27 Q. THERE' S A WHAT?

28 A. TWO HOURS OF OVERTIME WORK.

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1 Q. YOU USED THE WORD --

2 A. GUARANTEE, TWO HOURS OVERTIME EVERY DAY. I THINK --

3 Q. WHAT ABOUT BENEFITS?

4 A. BENEFITS PACKET IS A LOT HIGHER THAN ILWU.

5 Q. AND YOU ALSO HAD TO RECOGNIZE SENIORITY BASED ON THE
6 DATE THEY FIRST STARTED WORKING IN SAN JOSE INSTEAD OF THE
7 DATE THEY FIRST STARTED WORKING FOR YOU, CORRECT?

8 A. THAT' S CORRECT.

9 Q. SO WHO WORKED ON THE NUMBERS TO COME UP WITH THESE
10 NUMBERS? SOUNDS LIKE YOU DIDN' T WORK ON THE NUMBERS?

11 A. NO, I DIDN' T.

12 Q. WHO WORKED ON THE NUMBERS FOR CWS?

13 A. THIS IS WORKED BY RICK NORRIS' S OFFICE.

14 Q. YOUR ATTORNEY?

15 A. YES.

16 Q. IF WE WERE TO ADD ALL THE NUMBERS UP, WE WOULD BE
17 LOOKING AT, JUST SAYING ROUGH NUMBERS, WE' RE LOOKING AT OVER
18 11 MILLION DOLLARS?

19 A. CORRECT.

20 Q. WOULD THIS BE A CONVENIENT TIME TO TAKE OUR MORNING
21 RECESS?

22 THE FOREPERSON: LET' S TAKE A RECESS FOR 10 MINUTES.

23 LET ME REMIND YOU OF THE CONFIDENTIALITY ADMONITION.

24 THE WITNESS: THANK YOU.

25 (A BRIEF RECESS WAS TAKEN.)

26 THE FOREPERSON: LET ME CALL THIS SESSION OF THE
27 GRAND JURY BACK TO ORDER AND NOTE ALL THE JURORS ARE
28 PRESENT.

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1 BY MR. FINKELSTEIN:

2 Q. MR. DUONG, I'LL REMIND YOU YOU'RE STILL UNDER OATH.
3 I JUST WANT TO SHOW YOU A COUPLE MORE EXHIBITS AND I THINK WE
4 WILL BE ABLE TO RECESS YOUR TESTIMONY. OKAY?

5 A. YES.

6 MR. FINKELSTEIN: I WOULD LIKE TO MARK EXHIBIT 88, A
7 SEPTEMBER 28, 1998 AGREEMENT BETWEEN CWS AND THE ILWU LOCAL
8 6.

9 THE FOREPERSON: SO MARKED.

10 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
11 JURY EXHIBIT 88.)

12 BY MR. FINKELSTEIN:

13 Q. DO YOU HAVE EXHIBIT 88 IN FRONT OF YOU, MR. DUONG?

14 A. YES, THE AGREEMENT?

15 Q. YES. CAN YOU TELL US WHAT THIS EXHIBIT IS?

16 A. THIS IS THE AGREEMENT BETWEEN CALIFORNIA WASTE
17 SOLUTIONS AND THE ILWU'S LOCAL 6, THIS IS LONGSHOREMEN.

18 Q. SO THIS IS THE COLLECTIVE BARGAINING AGREEMENT,
19 CORRECT?

20 A. YES.

21 Q. THAT LETTER WE LOOKED AT BEFORE THE RECESS, THAT WAS
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22 AN ADDITION TO THIS AGREEMENT. DO YOU REMEMBER THE LETTER
23 THAT YOU SENT TO MR. FLOTTE AGREEING THAT IF CWS EXPANDED ITS
24 OPERATION, ILWU'S COLLECTIVE BARGAINING AGREEMENT WOULD APPLY.
25 DO YOU RECALL THAT?

26 A. YES.

27 Q. SO THIS IS THE ORIGINAL AGREEMENT, CORRECT?

28 A. YES.

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1 Q. OKAY. IF WE LOOK AT THE SIGNATURE PAGE, THAT'S YOUR
2 SIGNATURE, CORRECT?

3 A. YES.

4 Q. NO, I'M SORRY -- YES, THAT'S YOUR SIGNATURE?

5 A. YES.

6 Q. ABOVE, WITH THE WORDS CALIFORNIA WASTE SOLUTIONS,
7 INC.

8 A. YES.

9 Q. YOU SIGNED IT ON SEPTEMBER 29, 1998?

10 A. YES.

11 Q. THIS IS THE AGREEMENT THAT YOU EXPECTED WOULD GOVERN
12 YOUR WORKERS IN SAN JOSE IF NORCAL HAD BEEN AWARDED THE
13 CONTRACT, RIGHT?

14 A. YES.

15 Q. I WOULD LIKE TO NEXT MARK AS EXHIBIT 89 A SEVEN-PAGE
16 DOCUMENT WHICH IS A PRINTOUT FROM AN ARTICLE OFF THE INTERNET
17 ENTITLED, "STRIKES, MASSIVE WAGE FRAUD DISCOVERED IN OAKLAND
18 GARBAGE SWEATSHOP." APPARENTLY THE AUTHOR IS A DAVID BACON.

19 THE FOREPERSON: SO MARKED.

20 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
21 JURY EXHIBIT 89.)

22 BY MR. FINKELSTEIN:

23 Q. MR. DUONG, I WILL ASK YOU QUESTIONS, AND PLEASE
24 UNDERSTAND THIS IS ONLY A PIECE OF PAPER. THERE'S A NUMBER OF
25 ACCUSATIONS MADE ABOUT YOU IN THIS PIECE OF PAPER, WE DON'T
26 KNOW IF THEY ARE TRUE OR NOT. I WANT TO GIVE YOU AN
27 OPPORTUNITY TO RESPOND TO THESE ACCUSATIONS. OKAY?

28 A. YES.

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1 Q. TAKE A MINUTE AND EXAMINE THE ARTICLE, AND THEN I'LL
2 HAVE SOME QUESTIONS FOR YOU. THE ARTICLE IS APPARENTLY DATED
3 NOVEMBER 4, 1998, CORRECT?

4 A. (NO RESPONSE.)

5 Q. AT THE TOP IT SAYS OAKLAND, CALIFORNIA, 11/4/98?

6 A. YES.

7 Q. WHY DON'T YOU TAKE A LOOK AT IT AND I'LL ASK YOU SOME
8 QUESTIONS ABOUT IT.

9 HAVE YOU HAD A CHANCE TO LOOK AT THE ARTICLE?

10 A. YES.

11 Q. MY FIRST QUESTION IS, DID YOU SEE THIS ARTICLE BACK
12 IN 1998 WHEN IT APPARENTLY FIRST APPEARED?

13 A. NO.

14 Q. DID YOU TALK TO THE PERSON WHOSE NAME IS LISTED AS
15 THE AUTHOR OF THIS ARTICLE, DAVID BACON, ABOUT THESE SUBJECTS?

16 A. NO.

17 Q. DO YOU KNOW WHO MR. BACON IS?

- 18 A. I HEARD THAT FROM ONE OF MY CONSULTANTS --
- 19 Q. I DON' T WANT TO GET INTO HEARSAY. YOU DON' T KNOW WHO
- 20 HE IS?
- 21 A. NO.
- 22 Q. YOUR BUSINESS, I THINK YOU TOLD US, STARTED, CWS
- 23 STARTED IN OAKLAND, CORRECT?
- 24 A. YES.
- 25 Q. YOU HAD A CONTRACT WITH THE CITY OF OAKLAND TO DO
- 26 RECYCLING PROCESSES, RIGHT?
- 27 A. YES.
- 28 Q. WHEN YOU FIRST OPENED YOUR BUSINESS, WAS IT

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- 1 UNI ONI ZED?
- 2 A. NO.
- 3 Q. AND ACCORDING TO THIS ARTICLE, BACK IN THE FALL OF
- 4 1998 YOUR WORKERS WALKED OFF THE JOB; IS THAT RIGHT?
- 5 A. CORRECT.
- 6 Q. WHY WAS THAT?
- 7 A. THEY WANT TO ORGANIZE A UNION SHOP.
- 8 Q. AND CWS AND YOU RESISTED THAT INITIALLY, CORRECT?
- 9 A. CORRECT.
- 10 Q. THERE ARE A NUMBER OF ALLEGATIONS HERE, AND I DON' T
- 11 KNOW IF THEY ARE TRUE OR NOT, BUT I HAVE AN OBLIGATION TO
- 12 CONFRONT YOU WITH THOSE AND FIND OUT WHAT YOUR POSITION IS ON
- 13 THAT, SO BEAR WITH ME AS I GO THROUGH THESE, OKAY?
- 14 A. YES.
- 15 Q. IS IT, THE ARTICLE SUGGESTS THAT YOU TRIED TO HIRE

16 STRIKE BREAKERS TO DEAL WITH THE PROBLEM OF YOUR EMPLOYEES
17 WALKING OFF THE JOB; IS THAT TRUE?

18 A. YOU MEAN USE DIFFERENT EMPLOYEE?

19 Q. YES.

20 A. YES.

21 Q. OKAY. AND THE ARTICLE ALSO SUGGESTS THAT THIS WAS A
22 FIVE-WEEK STRIKE; IS THAT TRUE?

23 A. I THOUGHT IT WAS A THREE-WEEK, BUT THE ARTICLE SAID
24 FIVE.

25 Q. YOUR RECOLLECTION IS THREE, COULD HAVE BEEN FIVE?

26 A. YES.

27 Q. OKAY. NOW, THE ARTICLE GOES ON TO SUGGEST THAT YOUR
28 CONTRACT WITH THE CITY REQUIRED YOU TO PAY THE WORKERS EIGHT

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1 DOLLARS AN HOUR, AND IN FACT YOU WERE PAYING THEM LESS. IS
2 THAT TRUE?

3 A. I DON'T RECALL WHAT, THIS IS A LONG TIME AGO, BUT WE
4 PAY WHAT WE SUPPOSED TO.

5 Q. SO YOU BELIEVE -- SO IF THE CONTRACT REQUIRED EIGHT
6 DOLLARS AN HOUR, YOUR RECOLLECTION IS THAT IS WHAT YOU PAID
7 THE WORKERS?

8 A. YES.

9 Q. SO YOUR POSITION IS THE ALLEGATION HERE THAT YOU
10 UNDERPAID THE WORKERS, YOU PAID THE WORKERS LESS THAN THE
11 CONTRACT WITH THE CITY REQUIRED, IS NOT CORRECT?

12 A. THIS WAS GOING, AND I UNDERSTANDED [SIC] AT THAT
13 TIME, AND THEY CLAIM THAT WE DID NOT LIVE WITH THE CONTRACT

14 BECAUSE IT'S REQUIRED. THE CITY HAVE TO LOOK INTO IT. AND,
15 YOU KNOW, WE DIDN'T DO ANYTHING THAT'S NOT, YOU KNOW, BASED ON
16 THE CONTRACT.

17 Q. YOU'RE SAYING THE CITY LOOKED INTO THE ALLEGATION,
18 AND YOU BELIEVE THE CITY CONCLUDED THAT YOU WERE IN COMPLIANCE
19 WITH THE CONTRACT?

20 A. YES.

21 Q. THE ARTICLES GOES ON TO SAY THAT THE CITY HAD
22 BASICALLY SET YOU UP IN BUSINESS WITH THE LOAN OF \$350,000 FOR
23 THE EXPRESS PURPOSE OF PURCHASING VEHICLES TO BE UTILIZED IN
24 THE EXCLUSIVE PERFORMANCE OF THE AGREEMENT; IS THAT TRUE?

25 A. I DO NOT, I DON'T REMEMBER WHAT THE AMOUNT WAS. WHEN
26 WE START IN BUSINESS, AFTER NORCAL BOUGHT OUR FIRST BUSINESS,
27 ON PAPER WE HAVE NO MONEY BUT WE REQUIRE US TO GET A LOAN AND
28 WE WORK WITH CITY BY REDUCING RATE WE CHARGE PER HOUSEHOLD, BY

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1 REDUCING THAT RATE. AND IN RETURN THE CITY HAVE GIVEN THE SUM
2 OF CASH IN ADVANCE SO WE CAN MAKE DOWN PAYMENT FOR EQUIPMENT
3 WE PURCHASE.

4 Q. SO YOU'RE SAYING YOU DID GET A LOAN FROM THE CITY,
5 YOU DON'T RECALL THE AMOUNT?

6 A. THAT'S CORRECT.

7 Q. AND THE ARTICLE SUGGESTS FURTHER THAT THE INITIAL
8 ENTRY LEVEL WAGE YOU WERE PAYING WAS BELOW SIX DOLLARS AN
9 HOUR; IS THAT TRUE?

10 A. I DON'T REMEMBER THAT.

11 Q. FOUR, THE ARTICLE FURTHER SUGGESTS THAT YOU HAVE

12 POLITICAL CLOUT IN THE CITY OF OAKLAND BECAUSE YOU HAVE MADE
13 LARGE CONTRIBUTIONS TO OAKLAND ELECTED OFFICIALS; IS THAT
14 TRUE?

15 A. WE MAKE CONTRIBUTION FROM TIME TO TIME AND TO PEOPLE,
16 WE SUPPORT PEOPLE WHO WE THINK WILL DO THE RIGHT THING. AS WE
17 LIVE IN VIETNAM THROUGH THE WAR, WE ALWAYS HAVE TO WORK WITH
18 THE POLITICO TO GET THE COUNTRY GOING IN THE RIGHT WAY. SO
19 HERE I READ THE NUMBER, I DON'T REMEMBER HOW MUCH WE GIVE TO
20 EACH PERSON AND IF THIS IS AN ACCURATE, CORRECT NUMBER, BUT
21 IT'S TRUE WE MADE CONTRIBUTIONS.

22 Q. THE ARTICLE SUGGESTS THOUSANDS OF DOLLARS IN CAMPAIGN
23 CONTRIBUTIONS. WOULD THAT BE IN THE BALLPARK?

24 A. I DON'T REMEMBER THE NUMBER, BUT WE DID MAKE
25 CONTRIBUTIONS, YES.

26 Q. LET ME ASK YOU THIS: IF AS THE ARTICLE SUGGESTS THE
27 CONTRACT REQUIRED EIGHT DOLLARS HOUR AND MOST PEOPLE WERE
28 MAKING SIX DOLLARS AN HOUR, HOW COULD THAT BE IN COMPLIANCE

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1 WITH THE CONTRACT?

2 A. I DON'T RECALL THE WHOLE DETAIL, BUT THAT'S WHAT IS
3 HAPPENING. THE CONTRACT, KEEP IN MIND WE ONLY HAVE A QUARTER
4 OF THE BUSINESS IN THE CITY OF OAKLAND. WE DON'T HAVE THE
5 WHOLE CITY, ONLY A QUARTER.

6 Q. YOU'RE SAYING YOUR OAKLAND FACILITY DIDN'T PROCESS
7 EXCLUSIVELY OAKLAND MATERIALS?

8 A. THAT'S CORRECT.

9 Q. SOME OF THE MATERIALS PROCESSED IN OAKLAND WERE FROM

10 OAKLAND AND SOME WERE FROM OTHER PLACES?

11 A. THAT' S CORRECT.

12 Q. YOU BELIEVE ONLY A QUARTER OF THE MATERIALS CAME FROM
13 OAKLAND?

14 A. NO. WHAT I SAY IS THIS: WE HAVE A BUSINESS, OAKLAND
15 HAVE THE WHOLE CITY RECYCLABLE. WE ONLY HAVE A QUARTER OF THE
16 CITY, BUT WE, THE OAKLAND FACILITY PROCESS FOR MANY OTHER
17 CITIES.

18 Q. SO YOU PROCESSED AT THE OAKLAND FACILITY MATERIALS
19 FROM APPROXIMATELY ONE QUARTER OF THE CITY, CORRECT?

20 A. YES.

21 Q. AND YOU ALSO PROCESSED MATERIALS FROM OUTSIDE THE
22 CITY OF OAKLAND?

23 A. THAT' S CORRECT.

24 Q. SO ARE YOU SAYING YOU DIDN' T BELIEVE THAT THE
25 REQUIREMENT OF EIGHT DOLLARS AN HOUR APPLIED TO WORKERS
26 WORKING ON NON-OAKLAND MATERIALS?

27 A. NO. THIS IS WHAT. THE 10 PEOPLE THAT THE WORK FOR
28 CITY OF OAKLAND CONTRACT, WHICH IS THAT' S WHAT THE CONTRACT

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1 WITH OAKLAND WE HAVE IS ONLY FOR 10 WORKERS. WE HAVE 70
2 WORKERS, SO THE OTHER 60 WORKERS THAT IS ON THE BUSINESS,
3 OUTSIDE OAKLAND, LIKE BUSINESS WE GET FROM DIFFERENT CITIES
4 AND PROCESS, SO THEREFORE THERE ARE SOME PEOPLE GETTING HIGHER
5 PAY, SOME PEOPLE GETTING LOWER PAY.

6 Q. YOUR RECOLLECTION IS AND BELIEF IS THAT THE CWS
7 WORKERS WHO PROCESSED NON-OAKLAND MATERIALS DID NOT FALL

- 8 WITHIN THE MINIMUM WAGE PROVISION OF THE OAKLAND CONTRACT?
9 A. THAT'S CORRECT.
10 Q. WHAT ABOUT THE 10 WORKERS WHO PROCESSED THE OAKLAND
11 MATERIAL, WERE THEY GETTING AT LEAST EIGHT DOLLARS AN HOUR?
12 A. I DON'T KNOW WHAT THEY GET, YOU KNOW, BUT I AM SURE
13 THAT WITH ALL THIS IS GOING ON, THE CITY HAVE LOOKED INTO IT
14 AND UNION LOOK INTO IT. THE CITY LOOKING INTO IT AND, YOU
15 KNOW, THE DECISION COMING OUT OF THE CITY IS WE DO EVERYTHING
16 RIGHT. AND WE END UP WE DIDN'T PAY ANY EXTRA FOR UNION. I
17 DON'T RECALL THE DETAILS.
18 Q. LET ME ASK YOU THIS: THE ILWU ORGANIZED CWS BACK IN
19 1998?
20 A. YES.
21 Q. THAT WAS AS A RESULT OF A STRIKE?
22 A. YES.
23 Q. AND WHO DID YOU DEAL WITH FROM THE ILWU?
24 A. ROBERTO FLOTTE.
25 Q. F-L-O-T-T-E?
26 A. YES.
27 Q. HE'S THE GENTLEMAN OUTSIDE IN THE HALLWAY?
28 A. YES.

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- 1 Q. DO YOU REMEMBER WHAT HIS POSITION WITH THE ILWU WAS?
2 A. HE'S THE PRESIDENT.
3 Q. OKAY. MR. DUONG, I WANT TO ASK YOU SOME MORE
4 QUESTIONS, BUT I DON'T HAVE A DOCUMENT THAT I NEED. I'VE
5 ASKED YOUR ATTORNEY OUTSIDE TO SEE IF HE CAN LOCATE YOUR

6 DOCUMENT, SO I THINK WE ARE GOING TO EXCUSE YOU SUBJECT TO
7 BEING RECALLED WHEN WE GET THAT DOCUMENT. BUT LET ME SEE IF
8 THE GRAND JURORS HAVE ANY QUESTIONS FOR YOU, OKAY.

9 SO YOU'RE FREE TO GO TODAY -- OH, WAIT, WE DO HAVE
10 QUESTIONS.

11 ONE OF THE JURORS WOULD LIKE TO KNOW WHAT EVENTUALLY
12 HAPPENED TO THE SANTA CLARA MATERIAL, THAT IS, THE
13 NON-SAN JOSE, SANTA CLARA COUNTY MATERIAL THAT WAS SUPPOSED TO
14 BE PROCESSED. WHO PROCESSED IT AND HOW WAS IT HANDLED?

15 THE WITNESS: NORCAL NEVER DELIVERED THAT MATERIAL
16 TO US.

17 MR. FINKELSTEIN: NORCAL NEVER DELIVERED THAT
18 MATERIAL TO YOU?

19 THE WITNESS: THAT'S CORRECT. THEY BREACHED THE
20 CONTRACT AND THEY DELIVERED THE MATERIAL TO BFI. BFI IS
21 RECYCLING COMPANY.

22 MR. FINKELSTEIN: A COMPETITOR?

23 THE WITNESS: YEAH, IT'S A BIG COMPANY.

24 MR. FINKELSTEIN: DID YOU HAVE A LEGAL DISPUTE WITH
25 NORCAL ABOUT THAT?

26 THE WITNESS: YES.

27 MR. FINKELSTEIN: DID IT RESULT IN AN ARBITRATION
28 AWARD?

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1 THE WITNESS: YES. WE DON'T GET ANYTHING FOR THAT,
2 BECAUSE THE CONTRACT SAY THAT EVERYTHING HAD TO BE IN WRITING,
3 AND ALL WE HAVE IS TAPED RECORDING THAT MIKE SANGIACOMO AGREED

4 TO IT.

5 SO THE ARBITRATOR IN THE REPORT DELIVERS EVERYTHING
6 THAT WE SUBMITTED. THE ONLY THING IS WE DIDN'T GET AWARD FOR
7 THAT, BECAUSE IT'S NOT IN WRITING.

8 Q. SO YOU HAD YOUR TAPED RECOLLECTION AND VOICEMAIL THAT
9 WE LOOKED AT THIS MORNING, BUT YOU HAD NO WRITTEN AGREEMENT
10 REGARDING THE SANTA CLARA MATERIAL?

11 A. WE HAVE THE AGREEMENT WITH SANTA CLARA MATERIAL, BUT
12 IN THE AGREEMENT IF ANYTHING CHANGE IT HAVE TO BE IN WRITING.
13 AND THE CHANGE IS NORCAL AGREED TO ALLOW US TO TRANSFER
14 MATERIAL TO BURKE STREET, TO OAKLAND, IS ON THE TAPE ONLY.

15 Q. NOT IN WRITING?

16 A. THAT'S CORRECT.

17 Q. SO YOU DIDN'T WIN THE ARBITRATION PROCEEDING?

18 A. THAT'S CORRECT.

19 MR. FINKELSTEIN: ANY OTHER QUESTIONS?

20 I'M TRYING TO AVOID INCONVENIENCING YOU, SO I THINK
21 IT'S BETTER IF WE CALL YOU BACK WHEN WE HAVE THAT DOCUMENT
22 WE'RE LOOKING FOR, MR. DUONG.

23 THE WITNESS: NO PROBLEM.

24 MR. FINKELSTEIN: YOU'RE FREE TO GO TODAY, BUT YOU
25 WILL BE RECALLED, DO YOU UNDERSTAND THAT?

26 THE WITNESS: YES.

27 MR. FINKELSTEIN: THE FOREMAN WANTS TO REMIND YOU OF
28 THE ADMONITION.

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1 THE FOREPERSON: WE HAVE THE ADMONISHMENT TO KEEP
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2 EVERYTHING THAT YOU HEARD IN THIS GRAND JURY PROCEEDING
3 CONFIDENTIAL.

4 THE WITNESS: YES.

5 MR. FINKELSTEIN: WE WOULD LIKE TO START WITH THE
6 WITNESS AND THEN BREAK FOR LUNCH.

7 ROBERTO FLOTTE,
8 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
9 AS FOLLOWS:

10 THE WITNESS: YES.

11 EXAMINATION:

12 BY MR. FINKELSTEIN:

13 Q. COULD YOU PLEASE TELL US YOUR FULL NAME FOR THE
14 RECORD?

15 A. ROBERTO FLOTTE, F-L-O-T-T-E.

16 Q. MR. FLOTTE, HOW ARE YOU CURRENTLY EMPLOYED?

17 A. I'M CURRENTLY A REAL ESTATE AGENT.

18 Q. AND WHAT'S THE NAME OF THE COMPANY YOU WORK FOR?

19 A. INDEPENDENT REAL ESTATE BROKERS IN HAYWARD. I'M ALSO
20 ON PERMANENT DISABILITY, I SUFFERED A STROKE.

21 Q. WHEN YOU SUFFER A STROKE?

22 A. ON DECEMBER 10 OF 2000.

23 Q. AND AT THE TIME YOU SUFFERED YOUR STROKE, ON DECEMBER
24 10 OF 2000, HOW WERE YOU EMPLOYED?

25 A. I WAS THE PRESIDENT OF ILWU LOCAL 6 IN OAKLAND,
26 CALIFORNIA.

27 Q. ILWU LOCAL 6, THAT'S THE LONGSHOREMAN AND
28 WAREHOUSEMAN'S UNION?

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1 A. YES.

2 Q. AND DID YOUR UNION REPRESENT THE MATERIALS RECYCLING
3 FACILITY PROCESSORS IN THE BAY AREA?

4 A. YES, WE DID.

5 Q. THOSE ARE SOMETIMES CALLED MRF WORKERS, M-R-F?

6 A. MRF WORKERS? RECYCLE WORKERS.

7 Q. OKAY. AND WHEN WERE YOU FIRST ELECTED PRESIDENT OF
8 ILWU LOCAL 6?

9 A. IN NOVEMBER '98.

10 Q. OKAY. AND WERE YOU INVOLVED IN ORGANIZING CWS' S
11 OAKLAND FACILITY?

12 A. YES, I WAS.

13 Q. NOW, LET ME START BY SHOWING YOU AN EXHIBIT 89. THIS
14 IS A, APPEARS TO BE AN ARTICLE THAT WAS LOCATED ON THE
15 INTERNET BY A FELLOW NAMED DAVID BACON. DO YOU KNOW DAVID
16 BACON?

17 A. YES, I DO.

18 Q. WHO IS DAVID BACON?

19 A. HE'S A LABOR JOURNALIST IN THE BAY AREA. I'M NOT
20 SURE.

21 Q. THIS IS AN ARTICLE ABOUT A STRIKE AT THE OAKLAND CWS
22 FACILITY BACK IN NOVEMBER, 1998?

23 A. YES.

24 Q. AND DID YOU PROVIDE INFORMATION TO MR. BACON FOR THIS
25 ARTICLE?

26 A. IF I REMEMBER, YES.

27 Q. OKAY. AND IS IT TRUE THAT BACK IN THE FALL OF 1998,
28 BEFORE CWS WAS ORGANIZED AS A UNION SHOP BY ILWU, THERE HAD

1 BEEN A STRIKE OR WALKOUT?

2 A. IT WAS A STRIKE.

3 Q. AND THIS HAD TO DO WITH WAGES AND BENEFITS?

4 A. YES. AT THAT TIME I WAS A BUSINESS AGENT, I WAS NOT
5 THE PRESIDENT YET.

6 Q. WHAT WAS YOUR JOB AS BUSINESS AGENT?

7 A. TO ORGANIZE NEW MEMBERS INTO THE UNION AND ORGANIZE
8 THE FACILITIES.

9 Q. AND FROM YOUR POINT OF VIEW, WHAT WAS THE DISPUTE
10 THAT LED TO THIS STRIKE?

11 A. IT WAS THE WORKERS WERE NOT BEING TREATED CORRECTLY.

12 Q. IN WHAT WAY?

13 A. THERE WAS NO GRIEVANCE PROCEDURE IN THE WAY WHERE IF
14 THEY HAD A PROBLEM THEY COULDN' T GO TO THE BOSS BECAUSE THE
15 BOSS WOULD BASICALLY FIRE THEM OR DISCIPLINE THEM.

16 Q. OKAY.

17 A. THEY WERE AFRAID TO BASICALLY GO TO THE BOSS, AND
18 THEY WEREN' T RECEIVING GOOD BENEFITS.

19 Q. WHAT ABOUT WAS THERE A WAGE DISPUTE AS WELL?

20 A. YES.

21 Q. WHAT WAS THE WAGE DISPUTE?

22 A. UH --

23 Q. IF YOU REMEMBER.

24 A. I REALLY CAN' T.

25 Q. DO YOU RECALL HOW LONG THE STRIKE LASTED?

26 A. IF I CAN RECALL, I THINK IT LASTED CLOSE TO THREE
27 MONTHS.

28 Q. ACCORDING TO THE ARTICLE, IT LASTED FIVE WEEKS?

- 1 A. WELL -- I DON'T REALLY REMEMBER, I THINK IT WAS
2 CLOSER TO THREE MONTHS. WE EVEN HAD TO GO TO THE CITY COUNCIL
3 TO GET SOME HELP.
- 4 Q. YOU THINK IT WAS THREE MONTHS?
- 5 A. THAT'S MY OPINION. I'M NOT SURE.
- 6 Q. IS THAT BECAUSE YOU THINK --
- 7 A. IT LASTED A WHILE.
- 8 Q. DO YOU THINK THE STROKE HAS AFFECTED YOUR
9 RECOLLECTION IN ANY WAY?
- 10 A. NOT TOO MUCH, I DON'T THINK, IN MY OPINION.
- 11 Q. LET ME ASK YOU THIS: TO WORK IN THE REAL ESTATE
12 BUSINESS, DID YOU HAVE TO TAKE AN EXAM?
- 13 A. YES, I TOOK THE STATE EXAM.
- 14 Q. DID YOU PASS IT THE FIRST TIME?
- 15 A. NO, SECOND TIME.
- 16 Q. SO APPARENTLY THE STROKE DIDN'T INTERFERE WITH YOUR
17 ABILITY TO PASS THAT EXAM?
- 18 A. I DON'T THINK SO, NOT IN MY OPINION.
- 19 Q. YOU'RE THINKING IT'S JUST THE PASSAGE OF TIME THAT'S
20 AFFECTED YOUR MEMORY IN SOME REGARD?
- 21 A. YES.
- 22 Q. BY THE WAY, TELL US WHAT THE TERRITORY OF ILWU LOCAL
23 6 WAS BACK IN 2000.
- 24 A. AT THE TIME, IT STRETCHED FROM CHICO TO FRESNO.
- 25 Q. SO THAT WOULD INCLUDE SAN JOSE?
- 26 A. YES, CORRECT.

27 Q. NOW, THIS STRIKE THAT'S DISCUSSED IN THIS ARTICLE
28 TAKES PLACE, TALKS ABOUT A WALKOUT ON AUGUST 21, CORRECT?

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1 A. WHAT PAGE ARE YOU READING?

2 Q. THE FIRST PAGE. I HAVE IT UP ON THE SCREEN.

3 A. OKAY. THAT'S WHAT IT SAYS. I CAN'T REMEMBER EXACTLY
4 WHAT DATE.

5 Q. THAT'S WHAT THE ARTICLE SAYS?

6 A. THAT'S RIGHT.

7 Q. YOU SPOKE TO MR. BACON AND GAVE HIM INFORMATION FOR
8 THE ARTICLE, RIGHT?

9 A. THAT'S WHAT IT SAYS, I PROBABLY DID, I DON'T
10 REMEMBER.

11 Q. LET ME SHOW YOU EXHIBIT 98. I'M SORRY, EXHIBIT 88.
12 IS THAT THE COLLECTIVE BARGAINING AGREEMENT THAT THE ILWU
13 LOCAL 6 ENTERED INTO WITH CWS?

14 A. THAT'S CORRECT.

15 Q. AND THE STRIKE THAT'S DESCRIBED IN THIS ARTICLE, THIS
16 HAD TO DO WITH A STRIKE OVER ORGANIZING CWS, RIGHT?

17 A. THAT'S CORRECT, IN OAKLAND.

18 Q. RIGHT. NO, LOOK. THE ARTICLE TALKS ABOUT A WALKOUT
19 ON AUGUST 21, RIGHT, THE ARTICLE?

20 A. YES.

21 Q. THE AGREEMENT WAS REACHED ON SEPTEMBER 28, RIGHT?

22 A. THAT'S WHAT IT SAYS, AND MY INITIALS, YES.

23 Q. THAT'S YOUR INITIALS, AND IF YOU LOOK AT THE
24 SIGNATURE PAGE THAT'S YOUR SIGNATURE, RIGHT?

- 25 A. THAT' S CORRECT, YES.
- 26 Q. SO AUGUST 21 TO SEPTEMBER 28, THAT' S NOT THREE
- 27 MONTHS, IS IT?
- 28 A. NO.

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- 1 Q. IT' S MORE LIKE FIVE WEEKS?
- 2 A. YES.
- 3 Q. SO, LOOKING AT THAT NOW, DOES IT REFRESH YOUR
- 4 RECOLLECTION THAT THE STRIKE WAS A FIVE-WEEK STRIKE, NOT A
- 5 THREE-MONTH STRIKE?
- 6 A. IT WAS A LONG STRIKE, I DON' T KNOW EXACTLY HOW LONG
- 7 IT LASTED. IN MY OPINION I THOUGHT IT LASTED THREE MONTHS.
- 8 Q. I UNDERSTAND THAT' S WHAT YOU THOUGHT WHEN YOU WALKED
- 9 IN, BUT THAT' S WHY I' M SHOWING YOU THE PAPER, TO SEE IF THAT
- 10 HELPS YOU CLARIFY YOUR RECOLLECTION.
- 11 SO, HAVING LOOKED AT THOSE DOCUMENTS, DOES THAT
- 12 CHANGE YOUR MEMORY NOW ABOUT HOW LONG THE STRIKE WAS?
- 13 A. YES.
- 14 Q. OKAY. IN OTHER WORDS, YOU WOULDN' T BE ON STRIKE
- 15 SIGNING AN AGREEMENT AND CONTINUE STRIKING, THE AGREEMENT
- 16 WOULD HAVE SETTLED THE STRIKE.
- 17 A. THAT' S CORRECT.
- 18 Q. IF THE ARTICLE IS CORRECT, THEN, THE STRIKE BEGAN ON
- 19 AUGUST 21 AND AGREEMENT WAS ON SEPTEMBER 28, THAT WOULD BE A
- 20 FIVE-WEEK STRIKE, RIGHT?
- 21 A. YES.
- 22 Q. OKAY. NOW, LET ME SHOW YOU EXHIBIT 87, WHICH IS A

23 FAX WHICH CONTAINS A LETTER TO YOU FROM MR. DUONG. DO YOU
24 RECALL RECEIVING THAT LETTER FROM MR. DUONG?
25 A. NO.
26 Q. YOU DON' T RECALL RECEIVING THAT LETTER?
27 A. NO, I DON' T.
28 Q. OKAY. DO YOU RECALL SHORTLY AFTER ENTERING INTO THE

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1 AGREEMENT -- WHAT' S THE DATE OF THAT LETTER?
2 A. OCTOBER 20, 1998.
3 Q. THAT WOULD BE LESS THAN A MONTH AFTER THE COLLECTIVE
4 BARGAINING AGREEMENT WAS ENTERED INTO, RIGHT?
5 A. THAT' S CORRECT.
6 Q. AND IN THAT LETTER MR. DUONG AGREES THAT IF HE, IF
7 CWS EXPANDS ITS OPERATION WITHIN YOUR TERRITORY, THE NEW
8 OPERATION WILL BE COVERED BY THIS EXISTING COLLECTIVE
9 BARGAINING AGREEMENT, CORRECT?
10 A. THAT' S CORRECT.
11 Q. DO YOU RECALL ENTERING INTO SUCH AN AGREEMENT WITH
12 MR. DUONG?
13 A. NO.
14 Q. OKAY. JUST A MINUTE.
15 A. SURE.
16 Q. SHOWING YOU EXHIBIT 8. DO YOU RECOGNIZE EXHIBIT 8?
17 A. YES.
18 Q. OKAY. IS THAT YOUR SIGNATURE ON THE BOTTOM OF THE
19 LETTER?
20 A. NO.

- 21 Q. THAT' S NOT YOUR SIGNATURE?
- 22 A. NO.
- 23 Q. DID YOU AUTHORIZE THIS LETTER TO GO OUT?
- 24 A. I DON' T REMEMBER.
- 25 Q. IS THAT THE STATIONERY, THE LETTERHEAD, IS THAT THE
- 26 ILWU LOCAL 6 STATIONERY LETTERHEAD?
- 27 A. THAT' S CORRECT.
- 28 Q. DO YOU HAVE ANY REASON TO BELIEVE THIS IS A FAKE OR

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- 1 FORGERY?
- 2 A. NO. USUALLY OUR OFFICE CLERICAL WORKERS ARE THE ONES
- 3 WHO SIGN THE LETTER.
- 4 Q. FOR YOU?
- 5 A. YES.
- 6 Q. DO YOU HAVE ANY REASON TO BELIEVE THIS WAS NOT SIGNED
- 7 WITH YOUR PERMISSION?
- 8 A. I DON' T THINK SO.
- 9 Q. OKAY. IN THIS LETTER YOU MAKE REFERENCE TO A
- 10 COLLECTIVE BARGAINING AGREEMENT THAT STATES IF CALIFORNIA
- 11 WASTE SOLUTIONS OPENS A NEW FACILITY WITHIN THE JURISDICTION
- 12 OF LOCAL 6, WHICH IS FROM CHICO TO FRESNO, CALIFORNIA, THE
- 13 EMPLOYEES AFFECTED WILL BE COVERED BY THE LOCAL 6 BARGAINING
- 14 AGREEMENT. IS THAT WHAT IT SAYS IN THAT LETTER?
- 15 A. YES.
- 16 Q. ISN' T THAT WHAT -- THAT' S CONSISTENT WITH THE
- 17 NOVEMBER 1998 LETTER FROM MR. DUONG THAT WE LOOKED AT A MOMENT
- 18 AGO, RIGHT?

19 A. YOU MEAN OCTOBER 20 --
20 Q. I 'M SORRY, OCTOBER 20.
21 A. YES.
22 Q. SO LOOKING AT -- IS THERE A REASON WHY YOU DON' T
23 RECALL THIS LETTER?
24 A. THAT' S THE PAST, AND TO ME, YOU KNOW, I 'M NO LONGER
25 OFFICIAL OF LOCAL 6, SO IT WAS IRRELEVANT. YOU KNOW, I JUST
26 DON' T REMEMBER ALL THAT STUFF.
27 Q. I UNDERSTAND THAT, BUT NOW YOU' RE UNDER OATH AND IT' S
28 RELEVANT. SO I 'M ASKING YOU ON YOUR OATH WHETHER YOU REMEMBER

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1 THIS LETTER OR NOT?
2 A. NO, I DON' T.
3 Q. LOOKING AT THE LETTERS HAS NOT REFRESHED YOUR
4 RECOLLECTION?
5 A. NO, IT DOESN' T.
6 MR. FINKELSTEIN: IT' S JUST ABOUT NOON. LET' S TAKE
7 OUR RECESS.
8 MR. FLOTTE, WE' LL SEE YOU BACK HERE AT 1: 30.
9 THE WITNESS: NO PROBLEM.
10 THE FOREPERSON: LET ME READ YOU AN ADMONITION ABOUT
11 CONFIDENTIALITY.
12 YOU ARE ADMONISHED NOT TO REVEAL TO ANY PERSON,
13 EXCEPT AS DIRECTED BY THE COURT, WHAT QUESTIONS WERE ASKED OR
14 WHAT RESPONSES WERE GIVEN, OR ANY OTHER MATTERS CONCERNING THE
15 NATURE OR SUBJECT OF THE GRAND JURY' S INVESTIGATION WHICH YOU
16 LEARNED DURING YOUR APPEARANCE BEFORE THE GRAND JURY, UNLESS

17 AND UNTIL SUCH TIME AS THE TRANSCRIPT OF THIS GRAND JURY
18 PROCEEDING IS MADE PUBLIC. VIOLATION OF THIS ADMONITION IS
19 PUNISHABLE AS CONTEMPT OF COURT.

20 DO YOU UNDERSTAND THAT?

21 THE WITNESS: YES, SIR.

22 MR. FINKELSTEIN: THANK YOU. WE WILL SEE YOU BACK
23 AT 1:30. YOU CAN JUST LEAVE THE EXHIBITS HERE.

24 THE WITNESS: THAT'S MINE.

25 MR. FINKELSTEIN: YOU CAN TAKE YOUR SUBPOENA.

26 THE FOREPERSON: WE WILL RECESS UNTIL 1:30.

27 MR. FINKELSTEIN: VERY GOOD, THANK YOU.

28 (THE LUNCHEON RECESS WAS TAKEN.)

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1000

1 SAN JOSE, CALIFORNIA

MARCH 30, 2006

2

3

AFTERNOON SESSION:

4

THE FOREPERSON: CAN I CALL THE GRAND JURY TO ORDER.

5

ROBERTO FLOTTE,

6

HAVING BEEN PREVIOUSLY SWORN, TESTIFIED ON HIS OATH AS

7

FOLLOWS:

8

EXAMINATION, CONTINUED:

9

BY MR. FINKELSTEIN:

10

Q. MR. FLOTTE, I'LL JUST REMIND YOU YOU'RE STILL UNDER

11

OATH. DO YOU UNDERSTAND THAT?

12

A. YES.

13

Q. I THINK WHEN WE BROKE FOR LUNCH WE WERE LOOKING AT

14

EXHIBIT 88. DO YOU HAVE THAT IN FRONT OF YOU?

- 15 A. WHICH ONE IS IT?
16 Q. 88.
17 A. NO -- YES.
18 Q. IF YOU' LL LOOK AT EXHIBIT 88, THERE' S SOME INITIALS
19 UNDERNEATH YOUR NAME. IT SAYS R-F, COLON, N-R. DO YOU SEE
20 THAT?
21 A. YES.
22 Q. DO YOU KNOW WHO N-R IS?
23 A. NANCY REED.
24 Q. HOW DOES SHE SPELL HER LAST NAME?
25 A. I THINK R-E-E-D.
26 Q. WHO IS NANCY REED?
27 A. A FORMER OFFICE, CLERICAL WORKER.
28 Q. WHAT?

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- 1 A. OFFICE CLERICAL WORKER.
2 Q. AND DO YOU KNOW WHERE SHE WORKS NOW?
3 A. NO.
4 Q. BY THE WAY, YOU RECEIVED A SUBPOENA TO APPEAR BEFORE
5 THE GRAND JURY; IS THAT CORRECT?
6 A. YES, I DID.
7 Q. DID THAT SUBPOENA REQUIRE YOU TO SEARCH FOR AND
8 PRODUCE DOCUMENTS FROM THE ILWU RELATING TO CERTAIN THINGS?
9 A. YES.
10 Q. HAVE YOU LOOKED FOR THOSE DOCUMENTS?
11 A. YES. I DON' T HAVE ANYTHING, ALL THAT STUFF WOULD BE
12 AT LOCAL 6. IT' S THE PROPERTY OF LOCAL 6, NOT PROPERTY OF

13 MINE.

14 Q. I UNDERSTAND THAT. MY QUESTION TO YOU IS,
15 REMEMBERING THAT YOU'RE UNDER OATH, WHEN YOU LEFT ILWU LOCAL
16 6, DID YOU TAKE ANY DOCUMENTS WITH YOU?

17 A. NO, I DID NOT.

18 Q. YOU LEFT EVERYTHING BEHIND?

19 A. THAT'S CORRECT, YES.

20 Q. YOU HAVE NO DOCUMENTS CALLED FOR IN THE SUBPOENA?

21 A. THAT'S CORRECT, I HAVE NO DOCUMENTS.

22 Q. DID YOU LOOK FOR THOSE DOCUMENTS?

23 A. YES, BUT I DON'T HAVE NOTHING.

24 Q. WHERE DID YOU LOOK?

25 A. IN MY OLD BRIEFCASE.

26 Q. ANYWHERE ELSE?

27 A. UH -- IN ANY OLD DOCUMENTS THAT I HAD THAT WERE IN MY
28 PERSONAL DOCUMENTS.

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1 Q. WERE THESE DOCUMENTS AT YOUR HOME OR OFFICE, OR
2 WHERE?

3 A. AT MY HOME. LIKE WRITTEN ORIGINALS.

4 Q. WHAT DO YOU MEAN, WRITTEN ORIGINALS? NOTES?

5 A. YOU WRITE LIKE ORIGINAL BEFORE YOU GET A LETTER OUT.

6 Q. YOU LOOKED FOR DRAFTS?

7 A. YES.

8 Q. AND YOUR TESTIMONY IS YOU DON'T HAVE ANY RECOLLECTI ON
9 WHATSOEVER ABOUT SENDING A LETTER TO THE MAYOR OF SAN JOSE IN
10 OCTOBER OF 2000?

11 A. I DON' T REMEMBER.

12 Q. OKAY.

13 A. IF I COULD ADD SOMETHING TO THAT, SOME OF THIS STUFF
14 YOU' RE SHOWING ME, WHERE IT SAYS WE HAVE A JURISDICTION FROM
15 CHICO TO FRESNO, WELL, WE DO HAVE, AT THAT TIME WHEN I WAS
16 THERE WE HAD JURISDICTION FROM CHICO TO FRESNO, AND THIS WOULD
17 PROBABLY BE A STANDARD LETTER WE PROBABLY SENT OUT TO
18 EMPLOYERS, BUT I DON' T REMEMBER SENDING THIS OUT TO THE MAYOR.

19 Q. OKAY. YOU DO REMEMBER, THOUGH, THAT IN 1998 YOU
20 SETTLED A STRIKE AT CWS BY ENTERING INTO A COLLECTIVE
21 BARGAINING AGREEMENT?

22 A. YES, I DID.

23 Q. YOU ALSO REMEMBER THAT, SHORTLY AFTER ENTERING INTO
24 THAT COLLECTIVE BARGAINING AGREEMENT, YOU REACHED AN
25 ADDITIONAL AGREEMENT WITH CWS THAT REQUIRED CWS TO RECOGNIZE
26 THAT COLLECTIVE BARGAINING AGREEMENT IN THE EVENT THAT CWS
27 EXPANDS ITS OPERATION OUTSIDE OF OAKLAND?

28 A. I DON' T REMEMBER THAT.

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1003

1 Q. YOU DON' T REMEMBER THAT?

2 A. NO, I DON' T.

3 Q. IS IT YOUR TESTIMONY THAT THERE WAS NO SUCH
4 AGREEMENT?

5 A. I JUST DON' T REMEMBER IT, I CAN' T ANSWER IT.

6 Q. YOU CAN' T SAY ONE WAY OR THE OTHER WHETHER THERE
7 WAS --

8 A. THAT' S CORRECT.

9 Q. DO YOU REMEMBER?
10 A. ONE THING I DO REMEMBER IS THAT I GOT A CALL FROM
11 DAVID DUONG, WHO ASKED ME TO APPEAR AT THE CITY COUNCIL
12 BECAUSE HE SAID HE WAS GOING TO BE GETTING A CONTRACT WITH THE
13 CITY. AND THAT IF WE WANTED JURISDICTION, JURISDICTION TO
14 REPRESENT THE WORKERS IN SAN JOSE, THAT WE WOULD, THAT IT
15 WOULD BE A GOOD IDEA IF I GO SPEAK ON HIS BEHALF AT THE CITY
16 COUNCIL, THAT HE'S A GOOD EMPLOYER AND IS GOOD TO THE WORKERS
17 AND ALL THAT.
18 Q. DID YOU GO DOWN TO THE SAN JOSE CITY HALL AND SPEAK
19 TO THE COUNCIL?
20 A. YES, I DID.
21 Q. WAS THAT IN OCTOBER 2000?
22 A. NO. FROM MY UNDERSTANDING, IT WAS A COUPLE OF YEARS
23 AFTER THAT.
24 Q. WHEN YOU SAY A COUPLE YEARS AFTER THAT, YOU MEAN A
25 COUPLE OF YEARS AFTER THE STRIKE IN OAKLAND?
26 A. YES.
27 Q. SO THE COUPLE OF YEARS -- THE STRIKE WAS IN 1998,
28 WHICH IS WHEN WE SAW THE COLLECTIVE BARGAINING AGREEMENT

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1 SIGNED?
2 A. YES.
3 Q. SO THAT WOULD BE 2000?
4 A. PROBABLY, YES, I DON'T REMEMBER THE DATE EXACTLY, BUT
5 HE CALLED ME.
6 Q. SO YOU SPOKE, FOR LIKE A MINUTE OR TWO IN FRONT OF

7 THE CITY COUNCIL?

8 A. UH -- PROBABLY FOR FIVE OR 10 MINUTES I THINK, I
9 DON'T REMEMBER.

10 Q. THAT'S BECAUSE YOU WERE EXPECTING THAT YOUR UNION
11 WOULD REPRESENT CWS'S WORKERS IN SAN JOSE?

12 A. YES, THAT'S THE ONLY REASON.

13 Q. OKAY, BUT AS IT TURNED OUT, YOU DIDN'T GET TO
14 REPRESENT CWS WORKERS IN SAN JOSE, CORRECT?

15 A. FROM MY UNDERSTANDING, NO, WE DIDN'T. I FOUND THAT
16 OUT RECENTLY. I JUST FOUND THAT OUT THAT WE DIDN'T REPRESENT
17 THE WORKERS, SO IT WAS BASICALLY A LIE.

18 Q. WHAT IS A LIE?

19 A. THAT IF WE WENT TO SPEAK ON BEHALF OF CALIFORNIA
20 WASTE SOLUTIONS, WE WERE GOING TO GET JURISDICTION TO
21 REPRESENT THE WORKERS.

22 Q. YOU WOULD OR WOULD NOT?

23 A. THAT WE WERE.

24 Q. WELL, WE'VE HEARD EVIDENCE OF SOME THINGS HAPPENED
25 THAT CHANGED THAT, AND THAT'S WHAT I WANT TO ASK YOU ABOUT.

26 DID YOU EVER GO TO DAVID DUONG AND ASK HOW COME YOU
27 DIDN'T GET TO REPRESENT --

28 A. NO.

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1005

1 Q. LET ME FINISH THE QUESTIONS. DID YOU EVER SPEAK TO
2 DAVID DUONG AND ASK HIM WHY ILWU WAS NOT GOING TO REPRESENT
3 THE CWS WORKERS IN SAN JOSE?

4 A. NO.

5 Q. WHY NOT?

6 A. I GUESS A LOT OF THINGS HAPPENED, I DON' T KNOW, I
7 JUST DON' T REMEMBER.

8 Q. WELL, WHAT DO YOU MEAN A LOT OF THINGS HAPPENED AND
9 YOU DON' T REMEMBER?

10 A. THERE WAS LOTS OF POLITICAL TURMOIL GOING ON IN THE
11 LOCAL AT THE TIME.

12 Q. WHAT KIND OF POLITICAL TURMOIL?

13 A. ELECTIONS WERE GOING ON WITH INTERNATIONAL.

14 Q. YOU MEAN UNION POLITICS?

15 A. THAT' S CORRECT, YES.

16 Q. YOU HAD YOUR STROKE WHEN, AGAIN?

17 A. DECEMBER 10 OF 2000. AND I WAS IN A COMA FOR SEVEN
18 TO 22 DAYS. I WAS IN THE HOSPITAL 20 MONTHS. I WAS TOTALLY
19 PARALYZED THE LEFT OF MY BODY. THEY HAD TO TEACH ME TO SIT UP
20 AND WALK AGAIN.

21 Q. DID YOU SUFFER ANY AMNESIA FROM THIS INCIDENT?

22 IN MY OPINION I DON' T THINK I DID, BUT MY DOCTORS
23 THINK I SUFFERED MEMORY LOSS.

24 Q. MEMORY LOSS. YET YOU WERE ABLE TO PASS AN EXAM FOR
25 YOUR REAL ESTATE LICENSE?

26 A. THAT' S CORRECT.

27 Q. TO PASS THE EXAM YOU HAD TO READ AND REMEMBER
28 MATERIALS, ANSWER QUESTIONS BASED ON YOUR RECOLLECTION OF THAT

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1 MATERIAL, RIGHT?

2 A. YES.

- 3 Q. APPARENTLY -- WHEN DID YOU TAKE THE REAL ESTATE EXAM?
4 A. I THINK IT WAS -- I'M NOT SURE. I THINK IT WAS 2005.
5 Q. LET ME ASK YOU THIS, DO YOU KNOW SOMEONE NAMED BOB
6 MORALES?
7 A. WHO?
8 Q. BOB MORALES.
9 A. I THINK HE'S A TEAMSTER AGENT FROM THE SAN JOSE AREA.
10 Q. DO YOU KNOW MR. MORALES?
11 A. NO, I'VE HEARD OF HIS NAME.
12 Q. NEVER SPOKEN TO HIM?
13 A. NO.
14 Q. DID ILWU EVER BELONG TO THE SOUTH BAY LABOR COUNCIL?
15 A. FROM MY UNDERSTANDING, YES.
16 Q. WHAT DO YOU MEAN, FROM YOUR UNDERSTANDING?
17 A. WE HAD LABOR COUNCILS IN DIFFERENT CITIES, DIFFERENT
18 COUNTIES.
19 Q. SO THAT WAS NOT, DID ILWU LOCAL 6 EVER BELONG TO THE
20 SOUTH BAY LABOR COUNCIL?
21 A. WE SHOULD HAVE, YES.
22 Q. AND WHO WOULD HAVE BEEN THE PERSON WHO WOULD HAVE
23 INTERACTED WITH SOUTH BAY LABOR COUNCIL FROM ILWU LOCAL 6?
24 A. IN MY OPINION IT WOULD HAVE BEEN THE BUSINESS AGENT
25 ASSIGNED TO THIS AREA.
26 Q. WHO WAS THAT?
27 A. RHINA RATCLIFF, R-H-I-N-A, R-A-T-C-L-I-F-F.
28 Q. AND DO YOU KNOW WHETHER OR NOT HE'S STILL THE

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- 1 BUSINESS AGENT FOR THE ILWU LOCAL 6 DOWN HERE IN SAN JOSE?
- 2 A. NO.
- 3 Q. NO, YOU DON'T KNOW OR NO, HE'S NOT THE AGENT?
- 4 A. HE'S NOT AN AGENT ANYMORE.
- 5 Q. DO YOU KNOW WHERE HE IS NOW?
- 6 A. NO.
- 7 Q. DID ILWU LOCAL 6 LEAVE SOUTH BAY LABOR COUNCIL AFTER
- 8 THIS AWARD OF CONTRACT TO NORCAL AND CWS?
- 9 A. I DON'T KNOW.
- 10 Q. WHEN WERE YOU OUSTED AS PRESIDENT OF ILWU LOCAL 6?
- 11 A. IT WAS IN SEPTEMBER OF 2001. I CAME BACK AFTER 10
- 12 MONTHS OF BEING OFF, AND I CAME BACK FOR ONE WEEK AND THE
- 13 INTERNATIONAL REMOVED ME FROM OFFICE.
- 14 Q. AND WHO TOOK OVER AS PRESIDENT?
- 15 A. THEY PUT AN INTERIM PRESIDENT IN AT THE TIME.
- 16 Q. WHO WAS THAT PERSON?
- 17 A. IT WAS TWO FROM MY UNDERSTANDING. THERE WAS A DAVID
- 18 ARIAN FROM SAN PEDRO.
- 19 Q. HOW IS HIS LAST NAME SPELLED?
- 20 A. A-R-I-A-N, I THINK.
- 21 Q. WHO ELSE?
- 22 A. AND LEON HARRIS.
- 23 Q. WHILE YOU WERE INCAPACITATED, WHO WAS IN CHARGE OF
- 24 THE UNION LOCAL 6?
- 25 A. HIS NAME WAS HECTOR VALDIVA.
- 26 Q. HOW DO YOU SPELL THE LAST NAME?
- 27 A. V-A-L-D-I-V-A.
- 28 Q. AND WHO IS HECTOR VALDIVA?

1 A. SECRETARY-TREASURER. UNDER THE CONSTITUTION IN MY
2 ABSENCE THE SECRETARY-TREASURER WOULD TAKE OVER MY DUTIES.
3 Q. IS HE STILL AFFILIATED WITH ILWU LOCAL 6?
4 A. NO, HE'S RETIRED. HE LIVES IN OAKLAND, CALIFORNIA.
5 Q. DO YOU HAVE AN ADDRESS FOR HIM?
6 A. NO.
7 Q. A PHONE NUMBER?
8 A. YES, I DO.
9 Q. OKAY. WHAT IS HIS PHONE NUMBER?
10 A. I DON'T HAVE IT HANDY WITH ME.
11 Q. WILL YOU PROVIDE THAT INFORMATION TO US?
12 A. YES.
13 Q. OKAY. HOW DID YOU FIRST LEARN THAT ILWU LOCAL 6 WAS
14 NOT GOING TO BE REPRESENTING CWS'S WORKERS IN SAN JOSE?
15 A. WHEN I WAS SUBPOENAED. I ASKED THE PERSON WHO
16 SUBPOENAED ME, WHO GAVE ME THE SUBPOENA.
17 Q. OH. UP UNTIL RECENTLY YOU DIDN'T KNOW ANYTHING
18 ABOUT --
19 A. NOTHING.
20 Q. YOU NEED TO LET ME FINISH MY QUESTION. BEFORE YOU
21 WERE SUBPOENAED, YOU HAD NO IDEA ABOUT WHO WAS REPRESENTING
22 CWS'S SAN JOSE WORKERS?
23 A. THAT'S CORRECT.
24 Q. IS THAT BASICALLY BECAUSE YOU DON'T REMEMBER WHAT
25 HAPPENED BEFORE YOUR STROKE IN DECEMBER OF 2000, AND WHEN YOU
26 CAME BACK IN 2001 YOU WERE OUSTED FROM THE UNION?
27 A. I CAME BACK FOR ONE WEEK AND WAS ALLOWED TO WITHDRAW.
28 Q. YOU HAD NO IDEA WHAT WAS HAPPENING DOWN HERE IN SAN

1 JOSE?

2 A. THAT' S CORRECT.

3 Q. AFTER YOU GOT YOUR SUBPOENA, DID YOU SPEAK TO ANYONE
4 AT THE UNION OR AT CWS ABOUT THIS CASE?

5 A. NO. I DID SEE DAVID DUONG OUT THERE.

6 Q. IN THE HALLWAY YOU MEAN?

7 A. YES.

8 MR. FINKELSTEIN: I DON' T THINK WE HAVE ANY MORE
9 QUESTIONS. LET ME SEE IF THE JURORS HAVE QUESTIONS.

10 ALL RIGHT, MR. FLOTTE, WE DON' T HAVE QUESTIONS AT
11 THIS TIME, BUT THE INVESTIGATION IS STILL ONGOING, WHICH MEANS
12 THAT YOU' RE STILL UNDER SUBPOENA, YOU' RE SUBJECT TO BEING
13 RECALLED. DO WE HAVE A CONTACT NUMBER FOR YOU, DO YOU KNOW?

14 THE WITNESS: YES, I GAVE IT TO THE DISTRICT
15 ATTORNEY.

16 MR. FINKELSTEIN: WE' LL NOTIFY YOU IF WE NEED TO GET
17 YOU BACK HERE, OKAY?

18 THE WITNESS: OKAY.

19 MR. FINKELSTEIN: THANK YOU VERY MUCH.

20 THE FOREPERSON: LET ME REMIND YOU THE ADMONITION
21 FOR CONFIDENTIALITY STILL APPLIES, YOU' RE NOT TO SPEAK TO
22 ANYBODY ABOUT WHAT WE DISCUSSED.

23 THE WITNESS: YES.

24 MR. FINKELSTEIN: WE DON' T HAVE ANY ADDITIONAL
25 WITNESSES TODAY.

26 MY UNDERSTANDING IS NEXT WEEK WE WILL BE GOING
27 TUESDAY, WEDNESDAY, AND THURSDAY AFTERNOONS ONLY, 1: 30 ONLY.

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1 MR. FINKELSTEIN: TO GIVE YOU MY ASSESSMENT OF WHERE
2 WE ARE, WE HAVE ADDITIONAL WITNESSES THAT WE WANT TO PRESENT,
3 BUT I THINK WE'RE GETTING NEAR THE END OF THE PROCESS, AND
4 MAYBE A FEW MORE WEEKS AND WE SHOULD BE DONE WITH WITNESSES
5 AND WE CAN SEE WHERE WE GO FROM THERE.

6 DOES ANYONE HAVE ANY QUESTIONS?

7 A JUROR: I WAS WONDERING, THE TIME FRAME FOR
8 MR. FLOTTE BEING OCTOBER OF, DECEMBER OF 2000, HE HAD A STROKE
9 IN DECEMBER, BUT THERE WASN'T ANY QUESTIONS OR ANYTHING ABOUT
10 THAT TIME FRAME BETWEEN THE TWO CITY COUNCIL MEETINGS.

11 MR. FINKELSTEIN: I BELIEVE WE DID ASK HIM SOME
12 QUESTIONS. HE JUST CLAIMED HE DIDN'T REMEMBER.

13 A JUROR: OKAY.

14 THE FOREPERSON: ANY OTHER QUESTIONS?

15 DO YOU HAVE ANY IDEA AT THIS POINT ABOUT THE WEEK
16 AFTER NEXT? WE HAD RESERVED, I THINK, FOUR DAYS. DO WE
17 CONTINUE TO HOLD THOSE OPEN?

18 MR. FINKELSTEIN: FOR THE TIME BEING, AND WE WILL BE
19 SERVING SUBPOENAS AND TRYING TO FINISH UP WITH THE TESTIMONY
20 OF WITNESSES. UNFORTUNATELY, WE STILL NEED TO GET SOME
21 DOCUMENTS THAT WE HAVEN'T BEEN ABLE TO GET, AND THAT'S PART OF
22 THE HOLDUP HERE. WE HAVE SOME LEGAL MATTERS WE NEED TO GET
23 RESOLVED THAT HAVEN'T RESOLVED YET. ONE OF THE REASONS WE
24 CAN'T GO THURSDAY MORNING IS BECAUSE WE HAVE A HEARING
25 THURSDAY MORNING TO RESOLVE ISSUES, NONE OF WHICH YOU NEED TO

26 BE CONCERNED ABOUT, JUST BY WAY OF EXPLANATION WHY WE HAVE
27 SORT OF A LULL NOW.

28 A JUROR: ARE YOU ALLOWED TO COMMENT ON YOUR VIEW OF

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1 THINGS?

2 MR. FINKELSTEIN: I WILL. AT THE END, I WILL, BUT
3 NOT TODAY.

4 THE FOREMAN: OBVIOUSLY THERE IS A LOT OF
5 CURIOSITY.

6 MR. FINKELSTEIN: I UNDERSTAND.

7 A JUROR: WOULD YOU ANTICIPATE TESTIMONY WOULD BE
8 COMPLETED BEFORE THE END OF APRIL?

9 MR. FINKELSTEIN: THAT WOULD BE MY HOPE, BUT IT'S
10 HARD TO SAY RIGHT NOW. DEPENDS ON WHEN WE GET THE DOCUMENTS,
11 AND WE HAVE TO CALL WITNESSES BACK BASED ON THOSE DOCUMENTS.
12 I CERTAINLY WILL TRY TO DO THAT, BUT LET'S SAY THAT'S OUR
13 TARGET.

14 THE FOREPERSON: GOOD. THANK YOU. ON BEHALF OF THE
15 GRAND JURY, I WANT TO THANK YOU FOR THE DILIGENCE.

16 MR. FINKELSTEIN: THANK YOU VERY MUCH. I WANT TO
17 THANK YOU FOR YOUR PATIENCE AND COOPERATION. THANK YOU VERY
18 MUCH.

19 THE FOREPERSON: LET'S ADJOURN FOR TODAY, AND WE
20 WILL RECONVENE NEXT TUESDAY, APRIL 4, AT 1:30.

21 (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 7TH, 14TH, 22ND AND 30TH 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 26TH DAY OF JUNE, 2006.

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SUE HERFURTH, C. S. R.
CERTIFICATE NO. 9645

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SUE HERFURTH, CSR #9645