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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 7
PAGES 1013-1218

APRIL 4, 2006
APRIL 5, 2006
APRIL 6, 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

1	I		
2		I N D E X	
3			
4		W I T N E S S	P A G E
5			
6		PAT DANDO	1015
7		CI NDY CHAVEZ	1176
8			
9			
10		EXHIBIT LIST	
11			
12		EXHIBIT	PAGE
13		90	1055
14		91	1090
15		92	1091
16		93	1094
17		94	1097
18		95	1121
19		96	1193
20		97	1196
21		98	1201

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SUE HERFURTH, CSR #9645

1015

1 SAN JOSE, CALI FORNIA APRIL 4, 2006

2

3

PROCEEDINGS:

4

(ROLL WAS TAKEN BY THE FOREMAN AND IT WAS NOTED ONE
5 GRAND JUROR WAS ABSENT AND WOULD BE FOR THE NEXT TWO WEEKS.)

5

6

MR. FINKELSTEIN: VERY GOOD. WE' LL SEE IF THE
7 WITNESS IS AVAI LABLE.

7

8

PAT DANDO,

9

10 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
AS FOLLOWS:

10

11

THE WITNESS: I DO.

12

EXAMI NATION:

13

BY MR. FINKELSTEIN:

14

Q. GOOD AFTERNOON, COULD YOU ADJUST THE MI CROPHONE SO
15 IT' S CLOSE TO YOU? CAN YOU PLEASE TELL US YOUR FULL NAME
16 FOR THE RECORD.

16

17

A. PAT DANDO.

18

Q. CAN YOU SPELL YOUR LAST NAME FOR THE RECORD.

19

A. D-A-N-D-O.

20

Q. MI SS DANDO, I NEED TO ADVISE YOU OF CERTAIN MATTERS
21 BEFORE PROCEEDING, SO PLEASE LI STEN CAREFULLY.

21

22

THE GRAND JURY IS INVESTIGATING THE FOLLOWING:

23

WHY SAN JOSE CITY OFFI CIALS RECOMMENDED AND

24

APPROVED THE SELECTION OF NORCAL WASTE SYSTEMS OF SAN JOSE,

25 INC. TO PROVIDE FOR THE COLLECTION OF RESIDENTIAL WASTE AND
26 RECYCLABLE MATERIALS;

27 WHAT SAN JOSE CITY OFFICIALS KNEW ABOUT INCREASED
28 COSTS THAT MIGHT ARISE FROM THE EMPLOYMENT OF TEAMSTERS TO

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1016

1 DO RECYCLING WORK FOR NORCAL' S SUBCONTRACTOR, CALIFORNIA
2 WASTE SOLUTIONS, INC. , OR CWS;

3 WHEN SAN JOSE CITY OFFICIALS FIRST LEARNED ABOUT
4 SUCH INCREASED COSTS;

5 WHY SAN JOSE CITY OFFICIALS GAVE SECRET ASSURANCES
6 TO NORCAL THAT ADDITIONAL COSTS ARISING FROM THE USE OF
7 TEAMSTERS BY CWS WHICH WERE NOT INCLUDED IN THE ORIGINAL
8 AGREEMENT WITH NORCAL WOULD NONETHELESS BE PAID FOR BY THE
9 CITY OF SAN JOSE;

10 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
11 APPROVED A RATE HIKE IN MAY 2003 TO PAY FOR THESE ADDITIONAL
12 COSTS;

13 WHETHER SAN JOSE CITY OFFICIALS MISLED THE PUBLIC
14 ABOUT THE TRUE REASONS FOR THIS RATE HIKE;

15 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
16 APPROVED THE CONTRACT, THE AMENDMENT TO THE NORCAL AGREEMENT
17 IN 2004, TO PAY FOR ADDITIONAL COSTS DUE TO THE USE OF
18 TEAMSTERS BY CWS;

19 WHETHER ANYTHING WAS GIVEN OR PROMISED TO SAN JOSE
20 CITY OFFICIALS AS AN INDUCEMENT TO TAKE THESE ACTIONS.

21 SO THOSE ARE THE MATTERS THAT THE GRAND JURY IS
22 LOOKING INTO. I WANT TO ADVISE YOU THAT YOU' RE A SUBJECT OF

23 THE GRAND JURY INVESTIGATION, AND BY THAT I MEAN THAT YOU'RE
24 A PERSON WHOSE CONDUCT IS WITHIN THE SCOPE OF THE GRAND
25 JURY'S INVESTIGATION. I DON'T MEAN TO IMPLY ANYTHING
26 SINISTER OR IMPROPER ABOUT THAT. I WANT TO EXPLAIN TO YOU
27 THAT YOUR CONDUCT IS WITHIN THE SCOPE OF THE INVESTIGATION.
28 YOU CAN REFUSE TO ANSWER ANY QUESTION IF A

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1017

1 TRUTHFUL ANSWER TO THE QUESTION WOULD TEND TO INCRIMINATE
2 YOU. ANYTHING YOU DO OR SAY MAY BE USED AGAINST YOU BY THE
3 GRAND JURY OR IN A SUBSEQUENT LEGAL PROCEEDING.

4 IF YOU HAVE RETAINED COUNSEL, THE GRAND JURY WILL
5 PERMIT YOU A REASONABLE OPPORTUNITY TO STEP OUTSIDE OF THE
6 GRAND JURY ROOM TO CONSULT WITH COUNSEL IF YOU SO DESIRE.

7 DO YOU UNDERSTAND THESE MATTERS AND RIGHTS?

8 THE WITNESS: I DO.

9 Q. WHEN WERE YOU FIRST ELECTED TO THE SAN JOSE CITY
10 COUNCIL?

11 A. MAY OF 1995.

12 Q. AND WHEN DID YOUR TERM START?

13 A. IT STARTED SOON AFTER THAT. IT WAS A SPECIAL
14 ELECTION, SO IT WAS IN MAY OF '95.

15 Q. WHEN DID YOU LEAVE OFFICE?

16 A. I LEFT OFFICE IN DECEMBER TWO YEARS AGO BECAUSE OF
17 TERM LIMITS.

18 Q. THAT WOULD BE DECEMBER OF 2004?

19 A. THAT'S CORRECT.

20 Q. NOW, I KNOW THAT THIS INVESTIGATION GENERALLY

21 RELATES TO --

22 A. I'M SORRY, THAT WAS '05.

23 Q. SO YOU LEFT OFFICE IN DECEMBER OF '05?

24 A. THAT'S CORRECT.

25 Q. I WANT TO ASK YOU SOME QUESTIONS ABOUT THE
26 BACKGROUND OF THE NORCAL AGREEMENT WITH THE CITY. I'M NOT
27 GOING TO DWELL ON THEM, JUST TO SORT OF ORIENT YOU TO THE
28 QUESTIONS I WANT TO ASK YOU LATER.

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1018

1 LET'S BEGIN WITH THE START OF THE PROCESS. IN THE
2 YEAR 2000, DID THE CITY OF SAN JOSE ISSUE A REQUEST FOR
3 PROPOSALS FOR RECYCLE PLUS SERVICES?

4 A. THAT'S CORRECT.

5 Q. THAT'S SOMETIMES REFERRED TO AS AN RFP?

6 A. RIGHT.

7 Q. NOW, WAS THE RFP SOMETHING THAT THE CITY COUNCIL
8 APPROVED AND VOTED ON?

9 A. YES, WE DID.

10 Q. DID THE MAYOR ON HIS OWN HAVE THE AUTHORITY TO
11 MODIFY THE RFP WITHOUT CITY COUNCIL APPROVAL?

12 A. NO.

13 Q. DID THE MAYOR HAVE AUTHORITY WITHOUT CITY COUNCIL
14 APPROVAL TO IMPOSE REQUIREMENTS ON COMPANIES SUBMITTING
15 PROPOSALS THAT WERE NOT CONTAINED IN THE RFP?

16 A. NO.

17 Q. WAS THERE ANY REQUIREMENT IN THE RFP THAT COMPANIES
18 SUBMITTING PROPOSALS AGREE TO RECOGNIZE THE SAME UNIONS

- 19 RECOGNIZED BY THE EXISTING CONTRACTORS?
- 20 A. I DON'T REMEMBER THAT SPECIFICALLY.
- 21 Q. OKAY. WAS THERE ANY REQUIREMENT IN THE RFP THAT
- 22 COMPANIES SUBMITTING PROPOSALS AGREE TO BE BOUND BY EXISTING
- 23 COLLECTIVE BARGAINING AGREEMENTS IN PLACE WITH EXISTING
- 24 CONTRACTORS?
- 25 A. I DON'T REMEMBER THAT SPECIFIC LANGUAGE.
- 26 Q. WAS THERE ANY REQUIREMENT IN THE RFP THAT COMPANIES
- 27 SUBMITTING PROPOSALS AGREE TO USE TEAMSTERS?
- 28 A. I DON'T REMEMBER THAT SPECIFIC LANGUAGE EITHER.

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1019

- 1 Q. CAN THE CITY HAVE LAWFULLY REQUIRED COMPANIES
- 2 SUBMITTING PROPOSALS TO AGREE TO USE THE TEAMSTERS OR ANY
- 3 OTHER UNION?
- 4 A. NO.
- 5 Q. NOW, DO YOU RECALL THAT IN THE YEAR 2000 NORCAL
- 6 SUBMITTED A PROPOSAL IN RESPONSE TO THE RFP?
- 7 A. I DO.
- 8 Q. AND DID THE NORCAL PROPOSAL INCLUDE USING A
- 9 SUBCONTRACTOR, CWS, TO SORT THE RECYCLABLES?
- 10 A. IT DID.
- 11 Q. AND DID THE NORCAL PROPOSAL INDICATE THAT CWS WAS
- 12 GOING TO USE ILWU WORKERS OR LONGSHOREMEN PURSUANT TO AN
- 13 EXISTING COLLECTIVE BARGAINING AGREEMENT?
- 14 A. I DON'T REMEMBER THAT LANGUAGE. I WAS NOT, WHEN
- 15 UNIONS CAME BEFORE US I DIDN'T PAY THAT CLOSE ATTENTION TO
- 16 UNIONS.

17 Q. OKAY. I'M ASKING YOU, THOUGH, SOMETHING IN
18 THE NORCAL PROPOSAL. LET ME SEE -- WE WILL MOVE ON. I'LL
19 COME BACK TO THAT IN A MINUTE.

20 DO YOU RECALL THAT IN LATE SEPTEMBER 2000 THE
21 ENVIRONMENTAL SERVICES DEPARTMENT'S DIRECTOR, CARL MOSHER,
22 SUBMITTED A MEMO TO THE MAYOR AND CITY COUNCIL RECOMMENDING
23 THE SELECTION OF THE NORCAL PROPOSAL?

24 A. I DO.

25 Q. WHY DON'T WE SHOW YOU EXHIBIT 5, WHICH IS A
26 SEPTEMBER 22, 2000 MEMO FROM CARL MOSHER TO THE MAYOR AND
27 CITY COUNCIL. YOU'VE SEEN THAT MEMO BEFORE?

28 A. YES, I HAVE.

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1020

1 Q. TOWARDS THE BACK OF THE MEMO THERE IS A SUMMARY OF
2 THE CONTENTS OF THE VARIOUS COMPANIES' PROPOSALS, INCLUDING
3 WHAT THEIR LABOR SITUATION IS AND WHAT UNIONS THERE ARE.

4 COULD YOU SEE IF YOU CAN LOCATE THE ONE ABOUT
5 NORCAL AND ITS PROPOSAL.

6 A. YES. NORCAL PROPOSES TO USE THE
7 FOLLOWING EQUIPMENT?

8 Q. NO, THE FOLLOWING LABOR UNIONS. GO ON THERE.

9 A. IT'S AT THE BACK?

10 Q. IT'S IN THE BACK, YEAH. LET ME SEE IF WE CAN HELP
11 YOU. IT'S NUMBER 5 --

12 A. DO YOU HAVE A PAGE ON THAT?

13 Q. WE WILL GET TO THAT IN A MOMENT. LOOKS LIKE THE
14 LAST PAGE OF ATTACHMENT D -- I'M SORRY, NOT THE LAST PAGE,

15 IT'S THE LAST PAGE OF ATTACHMENT D OF THE NORCAL PROPOSAL,
16 SORRY. RIGHT BEFORE THE REPUBLIC SERVICES DISCUSSION
17 BEGINS.

18 A. I HAVE ATTACHMENT D.

19 Q. FIND THE NORCAL PROPOSAL. IT'S PAGE SEVEN ON THE
20 BOTTOM OF ATTACHMENT D.

21 A. I THINK THERE ARE TWO ATTACHMENTS D, CWS
22 MAINTENANCE AGREEMENT, THAT ILWU LOCAL 6 FOR ITS OAKLAND
23 OPERATION WILL BE AUGMENTED TO EXTEND TO CWS'S BURKE STREET
24 FACILITY.

25 Q. RIGHT. SO IT WAS KNOWN PUBLICLY AND COMMUNICATED
26 TO THE COUNCIL PRIOR TO THE FIRST VOTE ON THE NORCAL
27 PROPOSAL, WAS IT NOT, THAT THE NORCAL PROPOSAL INCLUDED
28 USING A SUBCONTRACTOR CALLED CWS TO DO THE RECYCLING PART OF

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1021

1 THE JOB, AND CWS WAS GOING TO EMPLOY ILWU WORKERS, CORRECT?

2 A. THAT'S CORRECT.

3 Q. OKAY. NOW, YOU RECALL, WAS THERE ANYTHING IN THE
4 ESD RECOMMENDATION ABOUT CWS SWITCHING FROM ILWU WORKERS TO
5 TEAMSTERS?

6 A. I DON'T KNOW. NOT THAT I'M AWARE OF.

7 Q. WAS THERE ANYTHING IN THE ESD RECOMMENDATION ABOUT
8 THE CITY AUDITOR REVIEWING NORCAL'S PROPOSAL BEFORE THE CITY
9 COUNCIL TOOK A FINAL VOTE?

10 A. UH -- THERE WAS A PROPOSAL FOR THE CITY AUDITOR TO
11 REVIEW BEFORE A FINAL VOTE.

12 Q. WAS THAT IN THE ESD RECOMMENDATION OR SOMEWHERE

13 ELSE?

14 A. IT WAS -- TO TELL YOU THE TRUTH, I'M NOT SURE WHERE
15 IT CAME FROM. I THINK THIS ACTUALLY CAME FROM THE CITY
16 COUNCILMEMBERS, AS I RECALL.

17 Q. TAKE A BRIEF LOOK AT THE MEMO FROM ESD AND SEE IF
18 THERE IS A RECOMMENDATION HERE ABOUT DEFERRING THE VOTE
19 PENDING A REVIEW BY THE CITY AUDITOR.

20 A. RECOMMENDATIONS ON THE FIRST PAGE, I DON'T SEE
21 THAT, OF THE FOUR RECOMMENDATIONS THAT ARE LISTED.

22 Q. WHAT PAGE IS THAT?

23 A. I'M ON PAGE ONE OF THE DOCUMENT THAT YOU GAVE ME.

24 Q. OKAY.

25 A. PAGE ONE, IT'S TO AWARD A SINGLE-FAMILY GARBAGE
26 CONTRACT, APPROVE THE AWARD OF CITYWIDE MULTIFAMILY.

27 THREE IS APPROVE THE AWARD OF THE YARD TRIMMINGS
28 AND COLLECTION AND PROCESSING.

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1022

1 FOUR, TO DIRECT THE ADMINISTRATION TO NEGOTIATE
2 THE FINAL AGREEMENT FOR THE SERVICES IDENTIFIED ABOVE.

3 Q. ANYTHING ABOUT DEFERRING SELECTION OF THE RECYCLE
4 PLUS SERVICE PROVIDERS PENDING A REVIEW BY THE CITY AUDITOR?

5 A. NOT IN THESE RECOMMENDATIONS.

6 Q. IS IT POSSIBLE THAT THAT'S BURIED SOMEWHERE ELSE IN
7 THE --

8 A. IT COULD BE BECAUSE I KNOW THAT WE ASKED THE CITY
9 AUDITOR TO DO A REVIEW OF THE DIFFERENT PROVIDERS.

10 Q. WHAT DON'T YOU TAKE A MOMENT, YOU'RE PROBABLY WAY

11 MORE FAMILIAR WITH THESE KINDS OF MEMOS THAN WE ARE, SO TAKE
12 A MOMENT AND SEE IF THERE IS ANYTHING ABOUT DEFERRING THE
13 VOTE PENDING REVIEW.

14 A. AS I SAY, IT'S NOT IN THE RECOMMENDATIONS. ARE YOU
15 SAYING YOU WANT ME TO LOOK IN THE CONTEXT OF THE --

16 Q. WELL, BASED ON PAST PRACTICES, IF THAT WERE GOING
17 TO BE PART THE RECOMMENDATION FROM ESD, WOULD THAT BE IN THE
18 SECTION YOU JUST READ TO US?

19 A. IT WOULD BE. IT WOULD BE UNDER RECOMMENDATIONS.

20 Q. SO DO YOU FEEL FAIRLY CONFIDENT THE FACT THAT IT'S
21 NOT THERE, PROBABLY, THAT THE RECOMMENDATION PROBABLY DID
22 NOT COME FROM ESD?

23 A. UH -- AS I SAID, I KNOW THERE WAS A REQUEST TO DO
24 AN AUDIT. I THOUGHT IT CAME FROM COUNCILMEMBERS.

25 Q. THAT'S WHY I WANT YOU TO TAKE YOUR TIME AND LOOK
26 THROUGH THIS. ONE OF THE THINGS WE WOULD LIKE TO KNOW IS
27 WHERE THE IDEA CAME FROM. TAKE A MOMENT AND SEE IF THERE IS
28 ANYTHING IN THE MEMO THAT COULD BE CONSTRUED AS A

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1023

1 RECOMMENDATION FROM ESD TO DEFER THE VOTE PENDING REVIEW BY
2 THE CITY AUDITOR.

3 A. NO. THIS MEMO FROM ESD APPEARS TO DEAL MORE WITH
4 THE QUALIFICATIONS OF THE HAULERS AND THE WORK PLAN
5 IDENTIFIED FOR THE HAULERS AND THE TRANSITION PLAN.

6 Q. WHEN YOU USE TERM HAULERS, H-A-U-L-E-R-S, YOU MEAN
7 THE RECYCLE PLUS SERVICE PROVIDERS?

8 A. I DO.

9 Q. SO APPARENTLY THE ESD DID NOT MAKE A RECOMMENDATION
10 IN ITS SEPTEMBER 22, 2000 MEMO TO DEFER CITY COUNCIL
11 SELECTION OF HAULERS PENDING REVIEW BY THE CITY AUDITOR,
12 WOULD THAT BE ACCURATE?

13 A. I THINK THAT'S ACCURATE. AS I RECALL, THE
14 RECOMMENDATION FOR AUDIT CAME SEVERAL MONTHS LATER.

15 Q. OKAY. YOU ANTICIPATED MY NEXT QUESTION.

16 A. SORRY.

17 Q. THAT'S OKAY. WHY DON'T WE HAVE YOU TAKE A LOOK AT
18 EXHIBIT 14 NEXT. HAVE YOU SEEN EXHIBIT 14 BEFORE?

19 A. I HAVE.

20 Q. WHAT IS IT?

21 A. THIS IS A MEMO FROM MAYOR GONZALES, VICE MAYOR
22 FISCALINI, COUNCILMEMBERS CHAVEZ AND POWERS. IT HAS SEVERAL
23 RECOMMENDATIONS THAT THOSE COUNCILMEMBERS RECOMMENDED TO
24 OCCUR BEFORE THERE WAS A FINAL CONTRACT.

25 Q. WAS THIS ESSENTIALLY MAYOR GONZALES'S MEMO THAT THE
26 OTHER PEOPLE SIGNED ONTO?

27 A. IT WAS.

28 Q. AND DID MAYOR GONZALES RECOMMEND THE SELECTION OF

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1024

1 NORCAL AS ONE OF THE RECYCLE PLUS SERVICE PROVIDERS?

2 A. YES.

3 Q. THIS IS A MEMO TO THE COUNCIL DATED OCTOBER 8,
4 2000?

5 A. THAT'S CORRECT.

6 Q. DID MAYOR GONZALES SIGN THIS MEMO?

- 7 A. HE DID, OR AT LEAST HIS INITIALS ARE HERE.
- 8 Q. YOU RECOGNIZE HIS INITIALS?
- 9 A. I RECOGNIZE HIS INITIALS.
- 10 Q. DID YOU INITIAL THE MEMO?
- 11 A. THAT'S NOT MY SIGNATURE. THAT'S NOT THE WAY I
- 12 GENERALLY DO PAT, BUT IT WAS MY INTENTION THAT THIS WAS A
- 13 MEMO THAT I WOULD SIGN.
- 14 Q. DID YOU AUTHORIZE SOMEONE TO INITIAL OR SIGN THIS
- 15 MEMO ON YOUR BEHALF?
- 16 A. THAT COULD HAVE BEEN A STAFF MEMBER.
- 17 Q. SO THE PAT HERE IS NOT WRITTEN BY YOU?
- 18 A. THAT'S NOT GENERALLY THE WAY I SIGN MY NAME.
- 19 Q. DO YOU BELIEVE YOU AUTHORIZED --
- 20 A. I DID.
- 21 Q. YOU HAVE TO LET ME FINISH.
- 22 A. OKAY.
- 23 Q. YOU AUTHORIZED YOUR INITIALS OR SIGNATURE TO BE
- 24 PLACED ON THIS MEMO IN SOME FASHION?
- 25 A. I DID.
- 26 Q. POSSIBLY BY ONE OF YOUR STAFF MEMBERS AT THAT TIME?
- 27 A. COULD HAVE BEEN.
- 28 Q. WHO WOULD THAT BE?

SUE HERFURTH, CSR #9645

1025

- 1 A. UH -- THE TWO PEOPLE IN MY OFFICE THAT MOST
- 2 GENERALLY WOULD SIGN IF I WERE NOT IN WAS MARGIE ESPONISA,
- 3 SECRETARY. M-A-R-G-I-E, E-S-P-O-N-I-Z-A, E-S-P-O-N-I-A --
- 4 THAT DOESN'T SOUND RIGHT.

- 5 Q. DO YOU WANT TO WRITE IT OUT?
- 6 A. E-S-P-O-N-I-S-A.
- 7 Q. IF NOT HER, YOU THOUGHT IT MIGHT BE SOMEONE ELSE?
- 8 A. IT COULD HAVE BEEN JOSHUA HOWARD, BUT MOST LIKELY
- 9 IT WAS MARGIE. SHE WAS GENERALLY THERE EVERY DAY.
- 10 Q. OKAY. DO YOU RECOGNIZE ANY OTHER INITIALS ON THE
- 11 DOCUMENT?
- 12 A. FRANK FISCALINI, CINDY CHAVEZ, AND CHARLOTTE
- 13 POWERS.
- 14 Q. DO YOU KNOW WHO AUTHORIZED THE PREPARATION OF THIS
- 15 MEMO?
- 16 A. I WOULD ASSUME THAT IT WAS RON GONZALES AND
- 17 JOE GUERRA.
- 18 Q. WHY DO YOU ASSUME THAT?
- 19 A. BECAUSE JOE GUERRA WAS THE MAYOR'S STAFF PERSON
- 20 THAT WAS POINT ON THIS PARTICULAR ISSUE.
- 21 Q. YOU SAID POINT, P-O-I-N-T?
- 22 A. RIGHT.
- 23 Q. BY BEING POINT, WHAT DOES THAT MEAN?
- 24 A. THE LEAD. IT COULD HAVE ALSO BEEN CINDY CHAVEZ.
- 25 Q. OKAY. DO YOU KNOW WHY THIS MEMO WAS PREPARED?
- 26 A. THERE WERE SEVERAL ISSUES THAT WERE RAISED BY A
- 27 NUMBER OF COUNCILMEMBERS, MANY OF THEM ON THIS MEMO, THAT
- 28 HAD PARTICULAR AREAS THAT THEY WANTED TO BE EXPLORED.

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1026

- 1 Q. NOW, THIS MEMO RELATES TO A MATTER THAT WAS TO BE
- 2 HEARD BEFORE THE CITY COUNCIL ON TUESDAY, OCTOBER 10, 2000;

3 IS THAT CORRECT?

4 A. THAT'S CORRECT.

5 Q. AND I TAKE IT NOT EVERY MATTER ON THE COUNCIL'S
6 AGENDA HAS A MEMO FROM A COUNCILMEMBER TO THE REST OF THE
7 COUNCIL; IS THAT CORRECT?

8 A. THAT'S CORRECT.

9 Q. AND SO WHY IS IT THAT THIS PARTICULAR ISSUE
10 RESULTED IN A MEMO SIGNED BY A NUMBER OF COUNCILMEMBERS AND
11 THE MAYOR, OR INITIALED ON BEHALF OF A NUMBER OF
12 COUNCILMEMBERS AND THE MAYOR?

13 A. FROM MY PERSPECTIVE, WHEN WE STARTED TALKING ABOUT
14 CHANGING THE INDIVIDUALS THAT WOULD PROVIDED SERVICE FOR THE
15 CITYWIDE GARBAGE COLLECTION, MY CONSTANT REMINDER IS IF IT'S
16 NOT BROKEN, DON'T FIX IT. SO I WAS CONCERNED ABOUT MAKING
17 THE CHANGE IN HAULERS TO BEGIN WITH, BECAUSE I'VE SEEN WHAT
18 HAPPENS TO THE CITY WHEN THINGS DIDN'T GO WELL.
19 HISTORICALLY, WHEN YOU CHANGE GARBAGE HAULERS THERE ARE
20 SEVERAL PROBLEMS. SO WITH THIS PARTICULAR CONTRACT, I HAD A
21 COUPLE OF CONCERNS.

22 ONE, I WANTED TO MAKE SURE THAT WE WERE GETTING
23 HAULERS THAT WERE QUALIFIED TO DO THE WORK, NOT JUST
24 TECHNICALLY, BUT FINANCIALLY.

25 I ALSO WANTED TO MAKE SURE THAT THE PRICE THAT
26 THEY ARE, THE RATES THEY WERE QUOTING WERE REAL AND THAT WE
27 WOULD BE GETTING BETTER SERVICES FOR, WITHIN THE NEW
28 CONTRACT.

SUE HERFURTH, CSR #9645

1 HAVING SAID THAT, I BROUGHT THOSE QUESTIONS UP
2 NUMEROUS TIMES AS WE WERE DISCUSSING MOVING TO THE NEW
3 CONTRACT OVER THE COURSE OF SEVERAL MONTHS.

4 SO I BELIEVE ONE OF THE WAYS TO GET ADDITIONAL
5 INFORMATION TO MAYBE RELIEVE SOME OF THE CONCERNS OF
6 INDIVIDUAL COUNCILMEMBERS, THEY WOULD PUT ISSUES ON A MEMO
7 AND ASK STAFF TO RESPOND TO THEM.

8 Q. DID YOU PROVIDE ANY INPUT FOR THE PREPARATION OF
9 THIS MEMO?

10 A. NO. AS I MENTIONED, I'M SURE THAT YOU COULD GO
11 BACK AND LISTEN TO COMMENTS OF THE COUNCIL SESSIONS OR STUDY
12 SESSIONS LEADING UP TO THIS AND YOU WOULD HEAR
13 COUNCILMEMBERS REPEAT CERTAIN CONCERNS, SO IT WOULD BE EASY
14 TO PULL OUT CONCERNS THAT I WANT ADDRESSED.

15 Q. WHEN DID YOU FIRST SEE THIS MEMO?

16 A. I COULDN'T TELL YOU.

17 Q. THE COUNCIL HEARING WAS ON A TUESDAY, OCTOBER 10,
18 2000, CORRECT?

19 A. RIGHT.

20 Q. AND COUNCIL HEARINGS ARE USUALLY ON TUESDAYS?

21 A. THAT'S CORRECT.

22 Q. THIS MEMO WAS DATED OCTOBER 8 OF 2000, CORRECT?

23 A. RIGHT.

24 Q. THAT MEANS IT WAS DATED ON A SUNDAY; IS THAT
25 CORRECT?

26 A. YES.

27 Q. DO YOU KNOW WHY THAT IS?

28 A. I ASSUME THAT WHOEVER WAS WRITING THE MEMO FINISHED

1 IT ON A SUNDAY.

2 Q. DID YOU HAVE A CHANCE TO REVIEW THE MEMO BEFORE IT
3 WENT TO THE CITY COUNCIL?

4 A. I COULDN'T TELL YOU SPECIFICALLY. WHAT NORMALLY
5 WOULD HAPPEN IS I WOULD HAVE SEEN IT AND HAD A CHANCE TO
6 REVIEW IT, OR MY STAFF WOULD HAVE A CHANCE TO REVIEW IT,
7 BEFORE I SIGNED IT. AND IT'S A GOOD POSSIBILITY I MAY HAVE
8 SEEN THIS ON MONDAY BEFORE TUESDAY COUNCIL.

9 Q. THAT'S YOUR BEST GUESS?

10 A. THAT'S MY BEST GUESS, AND IT'S ONLY A GUESS.

11 Q. ALL RIGHT. IS THERE --

12 A. LET ME ALSO ADD THAT CHANCES ARE THAT I HAD SEEN A
13 DRAFT OF THIS MEMO PRIOR TO THE FINAL, OR MY STAFF WOULD
14 HAVE SEEN A DRAFT OF THE MEMO.

15 Q. UH -- ARE YOU SUGGESTING THAT THE PROCEDURE WOULD
16 HAVE BEEN TO CIRCULATE A DRAFT TO GET CONSENSUS TO SUPPORT
17 THE MEMO?

18 A. THAT'S RIGHT, OR AT LEAST A DRAFT SO THAT THOSE
19 INDIVIDUALS WHO ARE GOING TO SIGN IT WOULD KNOW WHAT WAS IN
20 THE MEMO.

21 Q. OKAY. AS A FORMER ELECTED OFFICIAL, WOULD THERE BE
22 ANY OTHER PURPOSE OR VALUE IN SUBMITTING A MEMO LIKE THIS
23 INITIALED ON BEHALF OF SO MANY COUNCILMEMBERS TO THE COUNCIL
24 IN ADVANCE OF THE VOTE?

25 A. UH -- THE PRIMARY REASON FOR A MEMO LIKE THIS IS TO
26 GET ADDITIONAL INFORMATION.

27 Q. OKAY. WHY WOULD IT NEED TO BE INITIALED BY SO MANY
28 MEMBERS TO GET ADDITIONAL INFORMATION FOR COUNCIL?

1 A. IT WOULDN' T HAVE TO BE.

2 Q. WHAT WOULD BE THE PURPOSE OF GETTING LOTS OF PEOPLE
3 TO SIGN OFF ON THE MEMO?

4 A. I CAN TELL YOU WHY I SIGNED OFF WAS BECAUSE I
5 WANTED TO HAVE THOSE QUESTIONS ANSWERED THAT I MENTIONED TO
6 YOU BEFORE.

7 Q. IS THERE ANYTHING IN THIS MEMO ABOUT REQUIRING CWS
8 TO USE THE TEAMSTERS?

9 A. I DOUBT IT, OR I PROBABLY WOULDN' T HAVE SIGNED IT.

10 Q. WHY DO YOU SAY THAT?

11 A. WELL, AS I MENTIONED EARLIER, WHEN I LOOKED AT
12 ISSUES THAT CAME BEFORE THE COUNCIL, UNION INVOLVEMENT WAS
13 NOT GENERALLY SOMETHING THAT WAS A PRIORITY FOR ME IN
14 APPROVING OR NOT APPROVING THE PROJECT.

15 Q. I THINK YOU ALSO INDICATED YOU DIDN' T THINK THE
16 CITY COULD LAWFULLY REQUIRE A COMPANY SUBMITTING A PROPOSAL
17 TO GO WITH A PARTICULAR UNION; IS THAT CORRECT?

18 A. THAT' S CORRECT.

19 Q. SO IN LOOKING AT THE MEMO, IS THERE ANYTHING IN THE
20 MEMO THAT TALKS ABOUT REQUIRING CWS TO USE THE TEAMSTERS?

21 A. NO.

22 Q. IS THERE ANYTHING IN THE MEMO ABOUT COMPENSATING
23 NORCAL FOR EXTRA LABOR COSTS CAUSED BY CWS SWITCHING TO
24 TEAMSTERS?

25 A. NO.

26 Q. DID YOU TALK WITH MAYOR GONZALES ABOUT THE
27 SELECTION OF RECYCLE PLUS CONTRACTORS PRIOR TO THIS MEMO
28 BEING APPROVED BY YOU?

SUE HERFURTH, CSR #9645

1030

1 A. I DON' T BELIEVE I DID. JOE GUERRA WAS GENERALLY
2 THE PERSON THAT WOULD, THAT I WOULD TALK TO ON ISSUES LIKE
3 THIS. I DID MEET WITH THE MAYOR ON A MONTHLY BASIS, AND IT
4 COULD HAVE COME UP IN THE COURSE OF OUR REGULAR DISCUSSIONS;
5 MORE LIKELY IT WAS SOMETHING ALONG THE LINE OF MY
6 QUESTIONING WHY WE ARE CHANGING IN THE FIRST PLACE, AND I
7 DON' T RECALL HIM EVER SPECIFICALLY SAYING ANYTHING ABOUT
8 NORCAL.

9 Q. OKAY. THIS MEMO WAS DATED SUNDAY, OCTOBER 8, 2000,
10 CORRECT?

11 A. THAT' S CORRECT.

12 Q. ON OR BEFORE OCTOBER 8, 2000, DID THE MAYOR OR
13 ANYONE ELSE SAY ANYTHING ABOUT REQUIRING CWS TO USE
14 TEAMSTERS?

15 A. NO.

16 Q. ON OR BEFORE OCTOBER 8, 2000, DID THE MAYOR OR
17 ANYONE ELSE SAY ANYTHING TO YOU ABOUT COMPENSATING NORCAL
18 FOR THE EXTRA LABOR COSTS OF CWS SWITCHING TO TEAMSTERS?

19 A. ABSOLUTELY NOT.

20 Q. IN THIS OCTOBER 8, 2000 MEMO FROM THE MAYOR, DID
21 THE MAYOR RECOMMEND THAT THE CITY COUNCIL DELAY A FINAL VOTE
22 ON THE SELECTION OF RECYCLE PLUS CONTRACTORS UNTIL THE CITY
23 AUDITOR HAD REVIEWED NORCAL' S PROPOSAL?

24 A. IN THIS MEMO?

25 Q. YES. WHY DON' T YOU LOOK AT RECOMMENDATION FIVE ON
26 THE FIRST PAGE.

27 A. WELL, AS I SAID EARLIER, IT DIRECTS THE CITY
28 AUDITOR TO PERFORM A REVIEW. IT DOESN'T NECESSARILY SAY

SUE HERFURTH, CSR #9645

1031

1 BEFORE THE AGREEMENT WHO THE HAULERS WOULD BE.

2 Q. WELL, THIS MEMO IS DATED SUNDAY, OCTOBER 8,
3 CORRECT?

4 A. RIGHT.

5 Q. THE FIRST VOTE ON THE NORCAL PROPOSAL WAS TUESDAY,
6 OCTOBER 10, CORRECT?

7 A. THAT'S CORRECT.

8 Q. SO HOW COULD THE CITY AUDITOR PERFORM A REVIEW IN
9 TIME FOR THE OCTOBER 10 COUNCIL MEETING?

10 A. THEY WOULD NOT BE ABLE TO.

11 Q. SO NECESSARILY IMPLIED IN THE RECOMMENDATION WOULD
12 BE SOME KIND OF DELAY AND A SECOND VOTE BEFORE FINAL
13 SELECTION WAS MADE, WOULDN'T IT?

14 A. THAT'S CORRECT.

15 Q. OKAY. WHILE THE MEMO DOESN'T LITERALLY SAY, WE
16 RECOMMEND THE CITY AUDITOR PERFORM A REVIEW AND THAT WE
17 DEFER THE FINAL VOTE, THAT WOULD BE IMPLICIT IN WHAT THE
18 MEMO SAID, WOULD IT NOT?

19 A. THAT'S CORRECT.

20 Q. WHERE DID THE IDEA TO DEFER A FINAL VOTE PENDING A
21 REVIEW BY THE CITY AUDITOR COME FROM?

22 A. AS I RECALL, IT CAME FROM DISCUSSION AMONG
23 COUNCIL MEMBERS.

24 Q. WHOSE IDEA WAS IT?

- 25 A. I CAN'T REMEMBER.
- 26 Q. ARE YOU SURE THE IDEA CAME FROM A COUNCILMEMBER AS
- 27 OPPOSED TO STAFF?
- 28 A. NO. NO, I'M NOT. IF I RECALL A DISCUSSION ON THE

SUE HERFURTH, CSR #9645

1032

- 1 DAIS, THERE IS CERTAIN INFORMATION BEFORE THE FINAL VOTE.
- 2 Q. ON THE DAIS, MEANING AT THE MEETING ON OCTOBER 10?
- 3 A. THAT'S RIGHT.
- 4 Q. BUT THIS RECOMMENDATION PRECEDES THE COUNCIL
- 5 MEETING OF OCTOBER 10 BY SEVERAL DAYS. THIS RECOMMENDATION
- 6 IS IN THE MEMO THAT YOU BELIEVE YOU SAW AT LEAST A DRAFT OF
- 7 BEFORE APPROVING, RIGHT?
- 8 A. YES.
- 9 Q. SO CAN I ASSUME FROM THAT THE RECOMMENDATION THAT
- 10 THE CITY AUDITOR PERFORM A REVIEW CAME UP PRIOR TO THE FIRST
- 11 COUNCIL VOTE ON OCTOBER 10?
- 12 A. THE DISCUSSION TO HAVE AN AUDIT CAME UP.
- 13 Q. OKAY. WHO PARTICIPATED IN THAT DISCUSSION?
- 14 A. AS I SAID, AS I RECALL IT WAS GENERAL CONVERSATION
- 15 AMONG COUNCILMEMBERS.
- 16 Q. COULD YOU NAME SOME NAMES FOR US?
- 17 A. NO.
- 18 Q. WAS THE MAYOR INVOLVED IN THAT DISCUSSION?
- 19 A. MOST LIKELY.
- 20 Q. YOU JUST DON'T RECALL?
- 21 A. I DON'T KNOW, IT'S BEEN A WHILE. I JUST DON'T
- 22 REMEMBER.

23 Q. I UNDERSTAND. DO YOU RECALL ANY COUNCILMEMBERS OR
24 THE MAYOR GIVING ANY REASONS WHY IT MIGHT BE A GOOD IDEA FOR
25 THE CITY TO DIRECT THE CITY AUDITOR TO PERFORM A REVIEW
26 BEFORE THE FINAL SELECTION OF THE HAULERS?

27 A. WELL, AS I MENTIONED, AGAIN I'LL SPEAK FOR MYSELF,
28 BUT AS I RECALL, OTHER COUNCILMEMBERS EXPRESSED THE SAME

SUE HERFURTH, CSR #9645

1033

1 CONCERNS.

2 NUMBER ONE, THAT THEY WOULD BE TECHNICALLY
3 QUALIFIED TO PROVIDE THE SERVICES THAT THEY SAY THEY ARE
4 GOING TO PERFORM. AND THAT THE, THAT THEY WERE FINANCIALLY
5 SOUND. THAT THEY WERE CAPABLE OF PERFORMING THE SERVICES
6 THAT THEY SAY THEY ARE GOING TO PERFORM.

7 SO THOSE WERE THE REASONS TO DO THE AUDIT.

8 Q. LET ME ASK YOU THIS: THE RFP THAT I ISSUED FROM THE
9 CITY EARLIER THAT YEAR, THERE WAS A PROCESS THAT THE CITY
10 WENT THROUGH TO PRODUCE AND FINALIZE THAT RFP, CORRECT?

11 A. THAT'S CORRECT.

12 Q. IT WAS A FAIRLY LENGTHY PROCESS, WAS IT NOT?

13 A. IT WAS.

14 Q. IT INVOLVED NUMEROUS CITY COUNCIL MEETINGS,
15 CORRECT?

16 A. THAT'S RIGHT.

17 Q. AMENDMENTS TO THE RFP?

18 A. CORRECT.

19 Q. DISCUSSION WITH COUNCILMEMBERS AND STAFF ABOUT WHAT
20 SHOULD BE INCLUDED IN THE RFP?

- 21 A. THAT'S CORRECT.
- 22 Q. ANYTHING IN THE RFP THAT IN ANY WAY HINTED AT THE
23 POSSIBILITY OF HAVING THE AUDITOR PERFORM A REVIEW BEFORE
24 ANY FINAL SELECTION WAS MADE?
- 25 A. NOT THAT I REMEMBER.
- 26 Q. SO HOW WAS IT THAT THIS, AND THIS LENGTHY RFP
27 DEVELOPMENT PROCESS, IT SPANNED A YEAR OR MORE, DID IT NOT?
- 28 A. IT DID.

SUE HERFURTH, CSR #9645

1034

- 1 Q. HOW IS THAT A WHOLE YEAR WAS DEVOTED TO DEVELOP
2 WHAT SHOULD GO IN THE RFP? IN THE ORIGINAL CONTRACT,
3 NOTHING ABOUT CITY AUDITOR REVIEW, THEN ON THE EVE OF THE
4 FIRST VOTE, SOMEONE THINKS THAT, GEE, WE OUGHT TO HAVE THE
5 CITY AUDITOR LOOK INTO THIS BEFORE WE MAKE A FINAL
6 SELECTION.
- 7 A. AS I MENTIONED, OVER THE COURSE OF CONVERSATION AT
8 COUNCIL MEETINGS, THERE WAS CONCERN ABOUT, NUMBER ONE, WHY
9 WE'RE CHANGING. IS THIS PRICE TOO GOOD TO BE TRUE? IS IT
10 GOING TO BE A PRICE THAT'S GIVEN AND COME BACK LATER TO ASK
11 FOR MORE MONEY, IS IT -- IS THIS COMPANY WE'RE NOT FAMILIAR
12 WITH, ARE THEY SOUND ENOUGH TO PROVIDE THE SERVICES THAT WE
13 EXPECT. SO THERE WERE A LOT OF CONCERNS THAT WERE, THAT
14 SURFACED AROUND NORCAL.
- 15 Q. WERE THESE CONCERNS IN PUBLIC COUNCIL MEETINGS
16 PRIOR TO THE OCTOBER 10 VOTE?
- 17 A. YES, I BELIEVE MOST OF THEM WOULD HAVE BEEN OR --
18 YES, I BELIEVE THEY WOULD HAVE BEEN.

19 Q. SO WOULD THE MAYOR HAVE BEEN IN ATTENDANCE AT THESE
20 COUNCIL MEETINGS WHERE QUESTIONS ARE RAISED ABOUT WHETHER
21 THE PRICES WERE TOO LOW TO BE TRUE OR WHETHER THE CITY WOULD
22 HAVE TO LATER ON AMEND THE AGREEMENT TO PAY EXTRA MONEY,
23 WOULD HE HAVE BEEN PRESENT AT THOSE DISCUSSIONS?

24 A. HE WAS GENERALLY PRESENT AT ALL THE COUNCIL
25 MEETINGS.

26 Q. I TAKE IT YOU ATTENDED THE OCTOBER 10, 2000 COUNCIL
27 MEETING WHEN THE VOTE WAS TAKEN ON THE FIRST SELECTION,
28 FIRST VOTE ON THE SELECTION OF RECYCLE PLUS CONTRACTORS?

SUE HERFURTH, CSR #9645

1035

1 A. I BELIEVE I WAS THERE, YES.

2 Q. WHY DON'T WE HAVE YOU TAKE A LOOK AT EXHIBIT 18,
3 THE COUNCIL MINUTES FROM THAT DAY, TO VERIFY THAT YOU WERE
4 THERE.

5 DO THE MINUTES REFLECT THAT YOU WERE THERE?

6 A. THEY DO.

7 Q. DID THE COUNCIL ADOPT THE MAYOR'S RECOMMENDATIONS
8 AT THIS COUNCIL MEETING?

9 A. YES.

10 Q. DID THAT INCLUDE THE DELAYING OF THE FINAL VOTE
11 UNTIL THE CITY AUDITOR REVIEWED NORCAL'S PROPOSAL?

12 A. I'LL HAVE TO CHECK AND SEE.

13 Q. GO AHEAD.

14 A. IN GOING OVER THIS QUICKLY, IT DOES NOT LOOK AS
15 THOUGH IT WAS REQUIRED BEFORE THE FINAL VOTE, BUT RATHER TO
16 DIRECT THE CITY AUDITOR TO PERFORM A REVIEW AUDIT OF ALL

17 RECOMMENDED HAULERS TO DETERMINE THE OPERATIONAL ADEQUACY OF
18 SOME OF THE THINGS I MENTIONED EARLIER.

19 Q. WELL, JUST TO BE CLEAR, ON THE OCTOBER 10, 2000
20 COUNCIL VOTE, DID THE CITY MAKE A FINAL SELECTION OF
21 HAULERS?

22 A. YES.

23 Q. THEY MADE A FINAL SELECTION?

24 A. RIGHT.

25 Q. WHAT WOULD BE THE PURPOSE OF HAVING THE AUDITOR
26 REVIEW THE MATTER AFTER THE CITY HAD CHOSEN THE HAULER?

27 A. I SUPPOSE AS A VALIDATION THAT WE WERE GOING TO GET
28 WHAT WE THOUGHT WE WERE GETTING.

SUE HERFURTH, CSR #9645

1036

1 Q. WHAT IF -- WASN'T THERE A SECOND VOTE IN DECEMBER?

2 A. THERE WAS.

3 Q. WHAT WAS THE PURPOSE OF THE SECOND VOTE IF THIS WAS
4 THE FINAL VOTE?

5 A. TO TELL YOU THE TRUTH, I DIDN'T THINK THIS WAS THE
6 FINAL VOTE.

7 Q. THAT'S WHAT I'M ASKING YOU.

8 A. BY THIS RECOMMENDATION, IT APPEARS IT IS. IT SAYS,
9 APPROVAL OF AWARD TO SINGLE-FAMILY GARBAGE RECYCLE
10 COALITION, RECYCLE PROCESS AS FOLLOWS. AND IT OUTLINES, AND
11 THE VOTE WAS NINE TO ZERO.

12 Q. AND SO IS THERE A MISTAKE IN THE MINUTES, OR IS IT
13 A MATTER OF INTERPRETING THAT'S TRULY WHAT THE MINUTES MEAN,
14 OR WHAT'S THE SITUATION?

15 A. I CAN ONLY TELL YOU WHAT I BELIEVE. THERE WAS A
16 SECOND VOTE, AND MY THOUGHT WHEN THIS WAS APPROVED IS THAT
17 THE CITY AUDITOR WOULD COME BACK WITH ADDITIONAL INFORMATION
18 BEFORE WE HAD THE FINAL VOTE.

19 Q. SO I GUESS THIS VOTE WAS PENDING A SIGNOFF BY THE
20 CITY AUDITOR THEN. WOULD THAT BE THE WAY TO CHARACTERIZE
21 THIS?

22 A. SIGNED OFF BY THE CITY AUDITOR, AND IT ALSO
23 MENTIONS TO DIRECT STAFF TO NEGOTIATE A FINAL AGREEMENT AND
24 RETURN TO THE COUNCIL ON, I DON'T SEE THE DATE -- OH,
25 COUNCIL WITHIN 60 DAYS.

26 SO MY RECOLLECTION, AND BY THAT I WOULD SAY THAT
27 THIS WAS NOT THE FINAL VOTE. BUT AGAIN THE WAY IT'S WORDED,
28 THE RECOMMENDATION IS TO AWARD.

SUE HERFURTH, CSR #9645

1037

1 Q. SO THERE'S SOME AMBIGUITY; IS THAT WHAT YOU'RE
2 SUGGESTING?

3 A. SOUNDS LIKE IT.

4 Q. TO YOU THAT MEANT THAT THIS WAS A PRELIMINARY VOTE
5 SUBJECT TO CONFIRMATION AFTER THE AUDIT REVIEW?

6 A. THAT'S RIGHT.

7 Q. OKAY. DID THE MAYOR OR ANYONE ELSE SAY ANYTHING AT
8 THIS OCTOBER 10 COUNCIL MEETING ABOUT REQUIRING CWS TO USE
9 THE TEAMSTERS?

10 A. I DON'T BELIEVE SO, BUT IN MANY ISSUES THAT COME
11 BEFORE THE CITY COUNCIL THERE IS DISCUSSION ABOUT LABOR
12 PEACE. AND I WOULDN'T BE SURPRISED IF SOMEONE DIDN'T TALK

13 ABOUT LABOR PEACE, BUT I DON'T RECALL EVER HAVING SPECIFIC
14 DISCUSSIONS ABOUT WHICH, HOW TO GET THAT LABOR PEACE OR WHAT
15 IT WOULD INVOLVE.

16 Q. IS THERE ANY REASON TO BELIEVE THAT THE TEAMSTERS
17 ARE MORE PEACEFUL THAN ANY OTHER UNION?

18 A. I HAVE NOT BEEN PRIVY TO THAT IF THAT'S THE CASE.

19 Q. DID THE MAYOR OR ANYONE ELSE SAY ANYTHING AT THIS
20 COUNCIL MEETING ABOUT COMPENSATING NORCAL FOR CWS SWITCHING
21 FROM THE ILWU WORKERS TO THE TEAMSTERS?

22 A. NO.

23 Q. DID YOU SPEAK TO ANY NORCAL REPRESENTATIVES ABOUT
24 THE SELECTION OF RECYCLE PLUS CONTRACTORS PRIOR TO THE
25 OCTOBER 10, 2000 COUNCIL VOTE?

26 A. DID I SPEAK TO ANY?

27 Q. YES.

28 A. I BELIEVE I SPOKE TO BILL JONES, WHO WAS THE NORCAL

SUE HERFURTH, CSR #9645

1038

1 REPRESENTATIVE PRIOR TO THIS VOTE.

2 Q. DO YOU RECALL WHEN THAT DISCUSSION TOOK PLACE?

3 A. WELL, I DON'T KNOW THE EXACT DAY, BUT IT WOULD HAVE
4 BEEN PRIOR TO THIS VOTE.

5 Q. ARE WE TALKING DAYS, WEEKS, MONTHS?

6 A. PROBABLY WITHIN WEEKS.

7 Q. OKAY.

8 A. LET'S SAY 10 TO 12 DAYS.

9 Q. WHERE DID THE DISCUSSION TAKE PLACE?

10 A. IT WOULD HAVE OCCURRED IN MY OFFICE.

11 Q. AND WAS ANYONE ELSE FROM NORCAL PARTICIPATING IN
12 THAT DISCUSSION OTHER THAN MR. JONES?

13 A. UH -- BARBARA ZEITMAN-OLSEN MAY HAVE BEEN WITH HIM.

14 Q. WHAT ABOUT MIKE SANGIACOMO, NORCAL'S CEO? WAS HE
15 THERE?

16 A. I DON'T RECALL HIM BEING IN THE MEETING. HE MAY
17 HAVE BEEN, BUT I DON'T REMEMBER.

18 Q. AND THIS WAS ON ONE OCCASION PRIOR TO THE OCTOBER
19 10, 2000 VOTE?

20 A. THAT'S RIGHT.

21 Q. WHAT WAS THE SUBSTANCE OF THAT DISCUSSION?

22 A. I THINK BECAUSE OF SOME COMMENTS I HAD MADE IN
23 VARIOUS SESSIONS, THEY PROBABLY KNEW THAT I HAD SOME
24 CONCERNS. NUMBER ONE, WHY CHANGE IT IF NOT BROKEN, SO AS I
25 RECALL THEY WANTED TO ALLEVIATE MY FEARS IF THEY COULD, THE
26 REASONS THAT IT SHOULD BE CHANGED AND THAT THEY WOULD BE
27 ABLE TO PROVIDE THE SERVICES AT THE RATES THAT THEY WERE
28 TALKING ABOUT.

SUE HERFURTH, CSR #9645

1039

1 Q. ANY DISCUSSION ABOUT THEIR SUBCONTRACTOR, CWS,
2 SWITCHING FROM LONGSHOREMEN TO TEAMSTERS?

3 A. NO.

4 Q. ANY DISCUSSION ABOUT NORCAL GETTING EXTRA
5 COMPENSATION FROM THE CITY FOR THE EXTRA LABOR COSTS
6 ASSOCIATED WITH CWS SWITCHING TO TEAMSTERS?

7 A. NO.

8 Q. LET ME FINISH MY QUESTION. WOULD YOU HAVE ANY KIND

9 OF CALENDAR ENTRY OR RECORD THAT WOULD DOCUMENT THE DATE OF
10 THIS MEETING?

11 A. UNFORTUNATELY, NO. IF I WERE STILL IN OFFICE I
12 MIGHT STILL HAVE SOME OF THE RECORDS, BUT I DON'T HAVE THEM.

13 Q. IF THE CITY HAD A BACKUP TAPE OF YOUR OUTLOOK
14 CALENDAR, IT MIGHT BE REFLECTED?

15 A. IT COULD BE, YES.

16 Q. SO WE'VE TALKED ABOUT THE OCTOBER 10 FIRST VOTE.
17 LET'S MOVE ON TO THE EVENTS LEADING UP TO THE SECOND VOTE IN
18 DECEMBER. DO YOU RECALL THERE WAS A SECOND VOTE IN
19 DECEMBER?

20 A. I DO.

21 Q. PRIOR TO THE SECOND VOTE IN DECEMBER, DID MAYOR
22 GONZALES RECOMMEND THE SELECTION OF NORCAL IN A MEMO TO THE
23 CITY COUNCIL DATED DECEMBER 8, 2000 -- WHY DON'T YOU LOOK AT
24 EXHIBIT 21 BEFORE ANSWERING.

25 A. I APPRECIATE THE EXHIBITS.

26 Q. SIX YEARS IS A LONG TIME TO TRY TO REMEMBER THE
27 DATES?

28 A. YES.

SUE HERFURTH, CSR #9645

1040

1 Q. AND IS THAT MAYOR GONZALES' S SIGNATURE ON THE MEMO?

2 A. THAT'S MORE AKIN TO WHAT HIS SIGNATURE IS.

3 Q. DO YOU RECOGNIZE ANY OTHER SIGNATURES ON THIS
4 DOCUMENT?

5 A. I RECOGNIZE MINE.

6 Q. ANY OTHERS?

- 7 A. FRANK FISCALINI .
- 8 Q. ANY OTHERS?
- 9 A. AND CHARLOTTE POWERS.
- 10 Q. DO YOU KNOW AT WHOSE REQUEST THIS MEMO WAS
- 11 PREPARED?
- 12 A. I DON'T RECALL SPECIFICALLY, BUT I WOULD SAY MY
- 13 BEST GUESS WOULD BE MAYOR GONZALES.
- 14 Q. WHY DO YOU SAY THAT?
- 15 A. AGAIN, HIS OFFICE WAS THE OFFICE THAT WAS LEADING
- 16 THIS EFFORT.
- 17 Q. OKAY. DO YOU KNOW WHO PREPARED THIS MEMO?
- 18 A. I WOULD ASSUME THAT IT WAS JOE GUERRA, AND POSSIBLY
- 19 FRANK FISCALINI .
- 20 Q. WHY DO YOU SAY THAT?
- 21 A. BECAUSE JOE WAS, AGAIN, THE POINT PERSON OF THIS
- 22 ISSUE, AND FRANK FISCALINI AS THE VICE MAYOR MAY HAVE HAD
- 23 INPUT AS WELL.
- 24 Q. BUT YOU DON'T KNOW FOR CERTAIN ONE WAY OR THE
- 25 OTHER?
- 26 A. NO.
- 27 Q. DO YOU KNOW WHY THIS MEMO WAS PREPARED?
- 28 A. IT WAS PREPARED TO PROVIDE ADDITIONAL INFORMATION

SUE HERFURTH, CSR #9645

1041

- 1 TO THE COUNCIL ON WHAT THESE INDIVIDUALS THOUGHT SHOULD
- 2 OCCUR NEXT.
- 3 Q. WHAT I'M TRYING TO GET A SENSE OF IS WHEN THE
- 4 COUNCIL MEETS, THE COUNCILMEMBERS HAVE UNLIMITED DISCUSSION

5 AMONG THEMSELVES IN PUBLIC, ON THE RECORD, RIGHT?

6 A. RIGHT.

7 Q. CERTAINLY ONE WAY TO BRING CONCERNS TO FELLOW
8 COUNCILMEMBERS OR THE MAYOR IS TO JUST TALK ABOUT IT AT THE
9 COUNCIL MEETING, RIGHT?

10 A. THAT'S ONE WAY.

11 Q. WHY WAS IT NECESSARY TO BRING THESE CONCERNS TO THE
12 ATTENTION OF THE COUNCIL IN A WRITTEN MEMO?

13 A. THAT --

14 Q. I'M NOT SUGGESTING ANYTHING UNTOWARD ABOUT IT, I'M
15 TRYING TO UNDERSTAND WHY SOMETIMES ISSUES ARE RAISED ORALLY
16 AT THE COUNCIL MEETING AND WHY THERE IS A MEMO THAT'S
17 SUBMITTED?

18 A. UH -- THERE ARE PROBABLY A COUPLE OF REASONS YOU
19 WOULD DO A MEMO. ONE IS THAT YOU PUT IT ON THE RECORD THE
20 WAY YOU WANT IT TO BE RECORDED.

21 Q. SO WHEN YOU SAY YOU PUT IT ON THE RECORD, THIS MEMO
22 WOULD BECOME A PART OF THE OFFICIAL RECORD OF THE COUNCIL
23 MEETINGS?

24 A. THAT'S CORRECT.

25 Q. AND WHATEVER STATEMENTS ARE MADE WOULD BE PART OF
26 THE OFFICIAL RECORD OF THE AUTHOR'S OR THE SIGNER'S POSITION
27 ON THE ISSUE?

28 A. IF YOU WERE TO GO BACK AND LOOK AT THE MINUTES,

SUE HERFURTH, CSR #9645

1042

1 THEY WOULD NOT BE VERBATIM OF WHAT YOU STATED IN
2 CONVERSATION AT THE COUNCIL ROOM DISCUSSION.

3 Q. SO YOU WOULD GO TO THE MINUTES AND THERE WOULD BE A
4 REFERENCE TO THIS DOCUMENT, AND YOU COULD PULL THE DOCUMENT
5 AND COULD SEE IN MORE DETAIL WHAT THE PEOPLE SIGNING THE
6 MEMO THOUGHT ABOUT THE ISSUE?

7 A. THAT'S CORRECT.

8 Q. SO ALONG WITH THE MINUTES, THIS MEMO WOULD SORT OF
9 AUGMENT THE RECORD, IF YOU WILL?

10 A. THAT'S RIGHT.

11 Q. DO YOU RECALL WHEN YOU FIRST SAW THIS MEMO IN
12 RELATION TO THE DATE ON THE MEMO?

13 A. AGAIN, IT WAS MOSTLY LIKELY THERE WAS A DRAFT MEMO
14 THAT WOULD HAVE BEEN CIRCULATED A FEW DAYS PRIOR TO THE
15 SIGNING, BUT I DON'T KNOW A SPECIFIC DATE.

16 Q. THE FACT THAT THE MAYOR'S NAME APPEARS FIRST UNDER
17 THE FROM HEADING, DOES THAT SUGGEST HE IS THE LEAD ON THIS
18 MEMO?

19 A. I'M SORRY?

20 Q. THE FACT THAT THE MAYOR'S NAME APPEARS FIRST AMONG
21 THE NAMES ON THIS MEMO, DOES THAT SUGGEST HE'S THE LEAD
22 PERSON ON THIS MEMO?

23 A. NOT NECESSARILY. IN GENERAL, THE MAYOR IS
24 GENERALLY LISTED FIRST, AND THE VICE MAYOR IS GENERALLY
25 LISTED SECOND.

26 Q. IN THIS DECEMBER 8, 2000 MEMO, DID THE MAYOR
27 RECOMMEND THE SELECTION OF NORCAL AS ONE OF THE RECYCLE PLUS
28 PROVIDERS ALONG WITH THE OTHER PEOPLE IN THE MEMO?

1 A. NO.

2 Q. DID YOU SAY NO?

3 A. I SAID NO. AS I RECALL, NORCAL WAS RECOMMENDED BY
4 STAFF.

5 Q. I UNDERSTAND, BUT THERE IS NO
6 RECOMMENDATION -- LET'S BREAK IT DOWN.

7 RECOMMENDATION ONE IS TO DIRECT THE ADMINISTRATION
8 TO NEGOTIATE RECYCLE PLUS CONTRACTS WITH THE RECOMMENDED
9 COMPANIES, CORRECT?

10 A. MM-HMM.

11 Q. YES?

12 A. THAT'S CORRECT.

13 Q. WASN'T NORCAL ONE OF THE RECOMMENDED COMPANIES FROM
14 THE OCTOBER 10, 2000 VOTE?

15 A. THAT'S CORRECT.

16 Q. SO WOULD IT NOT BE ACCURATE TO SAY THAT AMONG THE
17 RECOMMENDATIONS IN THIS MEMO IS A RECOMMENDATION TO ENTER
18 INTO A CONTRACT WITH NORCAL?

19 A. THAT'S CORRECT. AND JUST FOR CLARITY, THE REASON I
20 SAID NO IS BECAUSE THIS SAID TO NEGOTIATE WITH THE
21 RECOMMENDED HAULERS. IT DIDN'T SAY NEGOTIATE WITH NORCAL.

22 Q. SO IT DOESN'T SAY NORCAL LITERALLY, BUT BY
23 REFERENCE ANYONE READING THIS AND FAMILIAR WITH THE FACTS
24 WOULD UNDERSTAND THE REFERENCE INCLUDED A CONTRACT WITH
25 NORCAL?

26 A. THAT'S CORRECT.

27 Q. IS THERE ANYTHING IN THIS MEMO ABOUT CWS USING
28 TEAMSTERS INSTEAD OF ILWU WORKERS?

1 A. I 'M SURE THERE WAS NOT, BUT LET ME JUST -- NO.
2 AGAIN, THE ISSUES THAT WERE DISCUSSED WAS REDUCING COSTS,
3 LOOKING AT SERVICE TO CUSTOMERS, BETTER RECYCLING. THERE
4 WERE MORE ISSUES OF WHAT THE COUNCIL WANTED TO RECEIVE FROM
5 THE CONTRACTOR.

6 Q. IS THERE ANYTHING IN THE MEMO ABOUT ADDITIONAL
7 COMPENSATION TO NORCAL FOR THE ADDITIONAL LABOR COSTS OF CWS
8 CHANGING FROM ILWU WORKERS TO TEAMSTERS?

9 A. NO, THERE IS NOT.

10 Q. DID YOU TALK TO MAYOR GONZALES OR ANYONE ELSE ABOUT
11 THE SELECTION OF RECYCLE PLUS CONTRACTORS BEFORE SIGNING
12 THIS MEMO?

13 A. I MAY HAVE. AS I SAID, I KNOW THAT MOST GENERALLY
14 I WOULD TALK WITH JOE GUERRA, BUT I COULD HAVE HAD A
15 CONVERSATION WITH THE MAYOR AS WELL.

16 Q. YOU CAN' T RECALL?

17 A. I CAN' T.

18 Q. DID THE MAYOR OR ANYONE ELSE SAY ANYTHING ABOUT
19 REQUIRING CWS TO USE THE TEAMSTERS PRIOR TO THIS MEMO BEING
20 SIGNED BY YOU?

21 A. NOT TO ME.

22 Q. DID THE MAYOR OR ANYONE ELSE SAY ANYTHING ABOUT
23 COMPENSATING NORCAL FOR THE EXTRA LABOR COSTS OF CWS
24 SWITCHING TO TEAMSTERS PRIOR TO YOUR SIGNING THIS MEMO?

25 A. I 'M NOT FOR SURE, I ASSUME IT MAY HAVE BEEN ON OR
26 AROUND THAT DATE THAT JOE GUERRA MENTIONED THAT THERE WERE
27 SOME PROBLEMS WITH THE UNIONS AND THAT, TO TELL YOU THE
28 TRUTH, I DON' T REMEMBER WHAT THE SPECIFIC CONVERSATION WAS,

1 BUT IT WAS, AGAIN, PROBABLY REGARDING LABOR PEACE.

2 Q. SO WHEN MR. GUERRA MAY HAVE SAID SOMETHING ABOUT
3 PROBLEMS WITH THE UNIONS, WHAT EXACTLY DO YOU RECALL HIM
4 SAYING?

5 A. UH -- YOU KNOW, I TAKE THAT BACK. THAT WAS NOT AT
6 THIS TIME, THAT WOULD HAVE BEEN AT A MUCH LATER TIME. AT
7 THIS TIME THERE WAS STILL, AS FAR AS I KNOW THERE WAS NO
8 DISCUSSION OF PARTICULAR LABOR PEACE ISSUES.

9 Q. JUST TO ORIENT YOU, MAKE SURE THAT YOU'RE BEING AS
10 ACCURATE AS I KNOW YOU WANT TO BE, THIS IS FOUR DAYS BEFORE
11 THE SECOND COUNCIL VOTE ON THE SELECTION OF HAULERS; DO YOU
12 UNDERSTAND THAT?

13 A. I DO. AND BEFORE THE FINAL VOTE, I WAS NOT AWARE
14 THAT THERE WERE ANY PARTICULAR LABOR ISSUES WITH PARTICULAR
15 UNIONS.

16 Q. OKAY WELL, DO YOU KNOW A FELLOW NAMED BOB MORALES?

17 A. I DO, I KNOW OF HIM.

18 Q. WHO IS BOB MORALES?

19 A. HE IS ONE OF THE LEADERS OF, I BELIEVE, THE LOCAL
20 UNION.

21 Q. TEAMSTERS?

22 A. OF THE TEAMSTERS.

23 Q. AND HE FREQUENTLY SPEAKS BEFORE THE CITY COUNCIL ON
24 MATTERS THAT CONCERN LABOR ISSUES?

25 A. THAT'S CORRECT.

26 Q. HE SPOKE AT THE OCTOBER 10, 2000 CITY COUNCIL
27 MEETING, DID HE NOT?

28 A. I BELIEVE I REMEMBER THAT.

SUE HERFURTH, CSR #9645

1046

1 Q. AND HE RAISED CONCERNS ABOUT A NEUTRALITY AGREEMENT
2 EXECUTED BY NORCAL'S SUBCONTRACTOR, CWS, DID HE NOT?

3 A. I DO RECALL THAT.

4 Q. AND AS A MATTER OF FACT, DIDN'T THE -- STRIKE THAT.
5 DID YOU PERCEIVE THAT AS A LABOR PEACE ISSUE?

6 A. I DID.

7 Q. AND DID THE CITY ATTORNEY SUBMIT A MEMORANDUM TO
8 THE CITY COUNCIL ON OCTOBER 27, 2000, REGARDING WHETHER OR
9 NOT THE CITY COULD LEGALLY REQUIRE A NEUTRALITY AGREEMENT
10 FROM ONE OF THE COMPANIES SUBMITTING A PROPOSAL?

11 A. I DON'T RECALL THE DATE, BUT I DO RECALL THE MEMO.

12 Q. LET'S HAVE YOU TAKE A LOOK AT THAT, EXHIBIT 20.
13 HAVE YOU SEEN EXHIBIT 20 BEFORE?

14 A. I HAVE.

15 Q. AND THIS IS A MEMORANDUM TO THE COUNCIL FROM THE
16 CITY ATTORNEY, RICK DOYLE, IS IT NOT?

17 A. THAT'S CORRECT.

18 Q. IT'S DATED ON OR NEAR OCTOBER 27, 2000?

19 A. YES.

20 Q. AND YOU SAW THIS BACK ON THAT DATE?

21 A. THAT'S CORRECT.

22 Q. IN THIS MEMO, ON PAGE TWO, THERE'S A LINE THAT
23 SAYS:

24 EMPLOYEES OF NORCAL SUBCONTRACTOR CALIFORNIA
25 WASTE SOLUTIONS, INC., ARE CURRENTLY REPRESENTED

26 BY A LABOR ORGANIZATION. AS SUCH, THERE IS LITTLE
27 CITY BUSINESS INTEREST OR JUSTIFICATION IN
28 REQUIRING NEUTRALITY AGREEMENTS IN THIS CASE.

SUE HERFURTH, CSR #9645

1047

1 IS THAT CORRECT?

2 A. THAT'S CORRECT.

3 Q. ABOVE THAT, THERE'S A STATEMENT ABOUT FEDERAL LABOR
4 LAW PROHIBITING A CITY FROM INTERFERING WITH THE COLLECTIVE
5 BARGAINING PROCESS REGULATED BY FEDERAL LAW?

6 A. THAT'S CORRECT.

7 Q. AND BELOW THAT, THERE'S A STATEMENT ABOUT A
8 NEUTRALITY PROVISION NEVER BEING A SPECIFICATION IN THE
9 ORIGINAL RFP, CORRECT?

10 A. THAT'S CORRECT.

11 Q. INSERTING SUCH A REQUIREMENT AT THIS LATE DATE,
12 RAISING A SERIOUS CONCERN ABOUT THE INTEGRITY OF THE RFP
13 PROCESS?

14 A. THAT'S CORRECT.

15 Q. DO YOU KNOW WHAT PROMPTED THIS MEMO FROM THE CITY
16 ATTORNEY?

17 A. I WOULD ASSUME IT WAS BECAUSE OF THE COMMENTS THAT
18 WERE MADE IN THE CITY COUNCIL MEETING THAT DAY.

19 Q. COMMENTS BY WHOM?

20 A. BY THE PUBLIC, AS WELL AS PROBABLY A FEW
21 COUNCILMEMBERS.

22 Q. WELL, LET'S EXAMINE THAT MORE IN A MOMENT, SHALL
23 WE? MR. MORALES MADE SOME COMMENTS ABOUT WANTING CWS TO

24 SIGN THAT NEUTRALITY AGREEMENT SO HE COULD HAVE HIS MEMBERS
25 WORK FOR CWS INSTEAD OF THE LONGSHOREMEN, CORRECT?

26 A. THAT'S CORRECT.

27 Q. JUST BECAUSE SOMEONE IN THE PUBLIC SAYS SOMETHING
28 AT CITY COUNCIL, IS THAT ENOUGH TO GET THE CITY ATTORNEY TO

SUE HERFURTH, CSR #9645

1048

1 SEND A MEMO TO THE CITY COUNCIL?

2 A. IT WOULD -- NO, NOT NECESSARILY.

3 Q. SOMEONE IN THE CITY COUNCIL MUST HAVE INQUIRED --
4 THE CITY ATTORNEY WORKS FOR THE CITY COUNCIL, RIGHT?

5 A. THAT'S CORRECT.

6 Q. HE'S THE CITY'S LAWYER?

7 A. THAT'S CORRECT.

8 Q. SO THE CITY ATTORNEY WOULD NOT GENERATE A MEMO LIKE
9 THIS TO CITY COUNCIL UNLESS A MEMBER OR THE MAYOR HAD
10 REQUESTED AN OPINION, RIGHT?

11 A. THAT'S CORRECT.

12 Q. SO WHO REQUESTED THIS OPINION?

13 A. IT MOST GENERALLY WOULD HAVE COME FROM
14 COUNCILMEMBER CHAVEZ, AND IT COULD HAVE ALSO COME FROM THE
15 MAYOR.

16 Q. ARE YOU SPECULATING, OR DO YOU HAVE REASON TO
17 BELIEVE THAT?

18 A. I'M SPECULATING.

19 Q. OKAY. I KNOW YOU WANT TO HELP US, BUT PLEASE DON'T
20 SPECULATE. YOU UNDERSTAND THIS IS A FORMAL INVESTIGATION?

21 A. I DO.

22 Q. YOU' RE UNDER OATH?
23 A. YES.
24 Q. WE' RE TRYING TO DO IN THIS A FORMAL MANNER. WE
25 MAKE DECISIONS BASED ON EVIDENCE, NOT JUST SPECULATION.
26 AND IF YOU DON' T KNOW THE ANSWER, I DON' T KNOW IS A FINE
27 ANSWER. BUT IF YOU HAVE SOME RECOLLECTION ABOUT IT, YOU CAN
28 QUALIFY YOUR ANSWER AND SAY, I' M NOT SURE, BUT I THINK SO,

SUE HERFURTH, CSR #9645

1049

1 WHICH IS THE CASE WITH REGARD TO HOW THIS CAME TO BE
2 GENERATED?
3 A. I DON' T KNOW.
4 Q. SO NOW I' VE FORGOTTEN WHERE WE DEPARTED.
5 A. I' M GLAD YOU' VE FORGOTTEN ALSO.
6 Q. WE WERE TALKING ABOUT JOE GUERRA, I BELIEVE, AND
7 SOME CONVERSATION YOU THINK YOU HAD WITH HIM ABOUT SOME
8 ISSUE, AND YOU' RE NOW THINKING THAT CONVERSATION, THAT ISSUE
9 BEING LABOR PEACE, AND NOW YOU THINK THAT CONVERSATION TOOK
10 PLACE SOME TIME AFTER THE SECOND VOTE IN DECEMBER; IS THAT
11 CORRECT?
12 A. I THINK SO, YES.
13 Q. THAT' S YOUR CURRENT BEST RECOLLECTION?
14 A. THAT IS.
15 Q. OKAY. SO LET' S RETURN TO THE CHRONOLOGY OF EVENTS.
16 WE LOOKED AT THE DECEMBER 8 MEMO SIGNED BY THE MAYOR AND
17 YOURSELF AND OTHERS, CORRECT?
18 A. RIGHT.
19 Q. SO DID YOU ATTEND THE DECEMBER 12 CITY COUNCIL VOTE

- 20 IN THE SELECTION OF RECYCLE PLUS CONTRACTORS?
21 A. I BELIEVE I WAS THERE.
22 Q. WHY DON'T YOU LOOK AT EXHIBIT 22, THE MINUTES FROM
23 THAT DATE, JUST TO VERIFY THAT YOU WERE THERE.
24 A. I WAS THERE.
25 Q. OKAY. AND DID THE CITY COUNCIL ADOPT THE
26 RECOMMENDATIONS IN THE MAYOR'S DECEMBER 8 MEMO?
27 A. YES.
28 Q. WHICH INCLUDED SELECTING NORCAL AS ONE OF THE

SUE HERFURTH, CSR #9645

1050

- 1 HAULERS?
2 A. YES.
3 Q. DID THE MAYOR OR ANYONE ELSE SAY ANYTHING PRIOR TO
4 THE VOTE ON DECEMBER 12 ABOUT REQUIRING CWS TO USE
5 TEAMSTERS?
6 A. NOT TO ME.
7 Q. DID THE MAYOR OR ANYONE ELSE SAY ANYTHING PRIOR TO
8 THE VOTE ON DECEMBER 12 ABOUT THE DESIRABILITY OF CWS USING
9 TEAMSTERS?
10 A. NOT THAT I RECALL.
11 Q. DID THE MAYOR OR ANYONE ELSE SAY ANYTHING PRIOR TO
12 THE VOTE ON DECEMBER 12 ABOUT ADDITIONAL COMPENSATION TO
13 NORCAL FOR ADDITIONAL LABOR COSTS CAUSED BY CWS SWITCHING TO
14 TEAMSTERS?
15 A. NO.
16 Q. ARE YOU SURE ABOUT THAT?
17 A. I DON'T RECALL HIM SAYING ANYTHING ABOUT IT. SIX

- 18 YEARS HAS BEEN A LONG TIME, BUT I DON' T RECALL.
- 19 Q. YOU THINK IT' S LIKELY AT ALL THAT YOU WOULD HAVE
- 20 APPROVED A CONTRACT KNOWING THAT THERE WOULD BE ADDITIONAL
- 21 COSTS DOWN THE ROAD?
- 22 A. NO.
- 23 Q. ANY DOUBT ABOUT THAT?
- 24 A. NO.
- 25 Q. PRIOR TO THE SECOND VOTE ON DECEMBER 12, 2002, DID
- 26 ANYONE FROM NORCAL OR ON BEHALF OF NORCAL SPEAK TO YOU ABOUT
- 27 THE RECYCLE PLUS CONTRACT?
- 28 A. UH -- OTHER THAN --

SUE HERFURTH, CSR #9645

1051

- 1 Q. OTHER THAN WHAT YOU HAVE ALREADY TOLD US.
- 2 A. THAT' S, THE ONLY DISCUSSION I REMEMBER HAVING WOULD
- 3 HAVE BEEN WITH BILL JONES.
- 4 Q. WHAT ABOUT CWS? DID YOU EVER TALK TO ANY
- 5 REPRESENTATIVES OF CWS?
- 6 A. I DID.
- 7 Q. WHO?
- 8 A. UH -- ONE OF THE PRINCIPALS, MR. DUONG.
- 9 Q. WOULD THAT BE DAVID DUONG, THE PRESIDENT?
- 10 A. YES, I BELIEVE IT WAS.
- 11 Q. WHAT WAS THE SUBSTANCE OF THAT CONVERSATION?
- 12 A. IT WAS, AGAIN, MOST LIKELY TALKING ABOUT SOME OF MY
- 13 CONCERNS ABOUT WHETHER OR NOT THEY COULD PROVIDE THE
- 14 SERVICES THAT THEY WERE COMMITTED TO.
- 15 Q. ANY DISCUSSIONS ABOUT WHICH UNION SHOULD REPRESENT

- 16 CWS' S WORKERS IN SAN JOSE?
- 17 A. NO.
- 18 Q. ANY DISCUSSION ABOUT ADDITIONAL COMPENSATION FOR
- 19 CHOOSING TEAMSTERS OVER THE LONGSHOREMEN?
- 20 A. NO.
- 21 Q. NOW, AFTER THIS DECEMBER 12, 2000 VOTE, DID THE
- 22 CITY STAFF NEGOTIATE THE WORDING OF THE FINAL AGREEMENT,
- 23 WRITTEN AGREEMENT WITH NORCAL?
- 24 A. TO THE BEST OF MY KNOWLEDGE, THE STAFF NEGOTIATED
- 25 THE FINAL CONTRACT.
- 26 Q. WAS THE MAYOR EVER AUTHORIZED TO GET INVOLVED IN
- 27 THE NEGOTIATIONS WITH THE CONTRACTOR?
- 28 A. NO.

SUE HERFURTH, CSR #9645

1052

- 1 Q. WOULD THAT HAVE BEEN SOMETHING OUTSIDE HIS JOB
- 2 DESCRIPTION?
- 3 A. TO MY UNDERSTANDING, IT WOULD HAVE BEEN OUTSIDE THE
- 4 JOB DESCRIPTION.
- 5 Q. WHY DO YOU SAY THAT?
- 6 A. GENERALLY THE MAYOR OR COUNCILMEMBERS, PLURAL,
- 7 DON'T NEGOTIATE CONTRACTS; PROFESSIONAL STAFF DOES.
- 8 Q. BASICALLY, THE MAYOR AND THE COUNCIL DECIDE POLICY
- 9 AND THE STAFF IMPLEMENTS POLICY?
- 10 A. THAT'S CORRECT. IMPLEMENTS THE POLICY AND PROVIDES
- 11 THE PARAMETERS.
- 12 Q. THAT'S THE FORM OF GOVERNMENT SAN JOSE HAS UNDER
- 13 ITS CHARTER?

- 14 A. THAT' S CORRECT.
- 15 Q. ISN' T IT TRUE UNDER THE CHARTER THE MAYOR HAS THE
16 SAME POWERS AS ANY OTHER COUNCIL MEMBER?
- 17 A. THAT' S CORRECT.
- 18 Q. THAT' S DIFFERENT FROM OTHER JURISDICTIONS, WHERE
19 THE MAYOR HAS DIFFERENT POWERS?
- 20 A. THAT' S CORRECT.
- 21 Q. SO DID YOU ATTEND THE MARCH 27, 2001 CITY COUNCIL
22 VOTE APPROVING THE AGREEMENT WITH NORCAL?
- 23 A. I BELIEVE I DID.
- 24 Q. WHY DON' T WE HAVE YOU TAKE A LOOK AT EXHIBIT 25,
25 THE MINUTES FROM THAT DATE, SO YOU CAN VERIFY THAT' S THE
26 CASE.
- 27 A. YES, I WAS THERE.
- 28 Q. OKAY. AT THAT COUNCIL MEETING, DID THE MAYOR OR

SUE HERFURTH, CSR #9645

1053

- 1 ANYONE ELSE SAY ANYTHING ABOUT REQUIRING CWS TO USE THE
2 TEAMSTERS?
- 3 A. NO.
- 4 Q. AT THAT COUNCIL MEETING, DID THE MAYOR OR ANYONE
5 ELSE SAY ANYTHING ABOUT ADDITIONAL COMPENSATION TO NORCAL
6 FOR CWS SWITCHING TO TEAMSTERS?
- 7 A. NO.
- 8 Q. NOW, LET ME HAVE YOU TAKE A LOOK AT EXHIBIT 26,
9 WHICH IS THE NORCAL AGREEMENT WITH THE CITY, IT' S A PRETTY
10 HEFTY DOCUMENT, BUT I WILL DIRECT YOUR ATTENTION TO A
11 PARTICULAR PARAGRAPH I HAVE IN MIND. IF YOU CAN TURN TO

- 12 PARAGRAPH 17.02.3.
- 13 A. ARE YOU WHERE CITY COUNCIL DESIRES TO AWARD?
- 14 Q. BELOW -- IT'S PARAGRAPH 17.02.03, NO COMPENSATION
- 15 ADJUSTMENT. IT'S PROBABLY NEAR THE BACK. LET ME SEE IF MY
- 16 COLLEAGUE CAN POINT YOU IN THE RIGHT DIRECTION.
- 17 A. 1703?
- 18 Q. 17.02.3.
- 19 A. ALL RIGHT.
- 20 Q. IS THAT PARAGRAPH LABELED NO COMPENSATION
- 21 ADJUSTMENT?
- 22 A. IT IS.
- 23 Q. AND DOES THAT PARAGRAPH PROVIDE THAT THE CITY IS
- 24 LIABLE FOR ANY WAGE ADJUSTMENTS MADE SUBSEQUENT TO THE
- 25 SIGNING OF THE CONTRACT?
- 26 A. THAT'S CORRECT.
- 27 Q. THAT'S PART OF THE AGREEMENT?
- 28 A. THAT'S RIGHT.

SUE HERFURTH, CSR #9645

1054

- 1 Q. WAS THERE ANYTHING IN THE AGREEMENT THAT REQUIRED
- 2 CWS TO USE TEAMSTERS?
- 3 A. NO.
- 4 Q. WAS THERE ANYTHING IN THE AGREEMENT THAT PROVIDED
- 5 FOR NORCAL RECEIVING ADDITIONAL COMPENSATION IN THE EVENT
- 6 THAT CWS SWITCHED TO TEAMSTERS?
- 7 A. NO.
- 8 Q. NOW, DID YOU ATTEND -- WE HAVE BEEN GOING ABOUT AN
- 9 HOUR. WE USUALLY LIKE TO GIVE THE REPORTER A BREAK, AND THE

10 WITNESS. PERHAPS WE CAN TAKE A FIVE-MINUTE BREAK.

11 THE FOREPERSON: LET ME READ AN ADMONITION ON
12 CONFIDENTIALITY.

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

21 DO YOU UNDERSTAND THAT?

22 THE WITNESS: I DO.

23 MR. FINKELSTEIN: IF YOU WOULD JUST REMAIN OUTSIDE
24 THE COURTROOM, WE'LL SUMMON YOU BACK IN FIVE MINUTES.

25 THE FOREPERSON: WE'LL TAKE A FIVE-MINUTE
26 RECESS.

27 THE FOREPERSON: LET'S RECONVENE THIS SESSION.
28 LET THE RECORD SHOW ALL THE JURORS ARE PRESENT, WITH THE

SUE HERFURTH, CSR #9645

1055

1 EXCEPTION OF (NAME REDACTED).

2 I WAS NOTIFIED THAT (NAME REDACTED) KNOWS MISS
3 DANDO AND WOULD LIKE TO SHARE. WOULD YOU LIKE TO EXPLAIN
4 WHAT YOUR RELATIONSHIP IS?

5 A JUROR: I HAVE KNOWN PAT FOR 30 YEARS. WE BOTH
6 GO TO THE SAME CHURCH. WE DON'T, WE'RE NOT CLOSE FRIENDS,
7 BUT WE ARE FRIENDS.

8 MR. FINKELSTEIN: WOULD THAT AFFECT YOUR
9 IMPARTIALITY AND FAIRNESS IN THIS MATTER IN ANY WAY, SHAPE,
10 OR FORM?

11 A JUROR: NO.

12 MR. FINKELSTEIN: THANK YOU.

13 WHY DON'T WE HAVE THE WITNESS RETURN.

14 BY MR. FINKELSTEIN:

15 Q. MISS DANDO, DID YOU ATTEND THE CITY COUNCIL VOTE ON
16 MAY 27, 2003 RAISING THE RECYCLE PLUS RATES NINE PERCENT?

17 A. I DID.

18 Q. AND I WOULD LIKE TO HAVE MARKED AS GRAND JURY
19 EXHIBIT 90 A CERTIFIED COPY OF THE MAY 27, 2003 CITY COUNCIL
20 MINUTES.

21 THE FOREMAN: SO MARKED.

22 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
23 JURY EXHIBIT 90.)

24 BY MR. FINKELSTEIN:

25 Q. WHAT DID YOU UNDERSTAND THE PURPOSE OF THE RATE
26 HIKE TO BE?

27 A. THAT'S WHY I DIDN'T SUPPORT IT. THE PROPOSED
28 REASONS, THOUGH, AS I RECALL, IT WAS, I'M SORRY --

SUE HERFURTH, CSR #9645

1056

1 Q. ITEM 7.1. YOU'RE REFERRING TO THE MINUTES NOW?

2 A. YES.

3 Q. I THINK IT'S ITEM 7.1.

4 A. IT IS. YOUR QUESTION WAS THE PURPOSE OF THIS?

5 Q. YEAH. WHAT DID YOU UNDERSTAND THE PURPOSE OF THIS

- 6 PROPOSED RATE HIKE TO BE?
- 7 A. UH -- WELL --
- 8 Q. IF YOU WANT TO TAKE TIME, IT'S ABOUT A TWO-PAGE
- 9 DISCUSSION. TAKE A MOMENT AND READ IT AND THEN ANSWER,
- 10 THAT'S FINE.
- 11 A. AS A QUICK REVIEW, THE PRIMARY REASON FOR THE
- 12 REQUEST BY STAFF TO RAISE RATES WERE COSTS WERE HIGHER, MORE
- 13 MILES OF STREET SWEEPING, TO HELP THE RECYCLE PLUS PROGRAM
- 14 TO BECOME SELF-SUSTAINING AND NOT TO CONTINUE TO HAVE TO BE
- 15 SUBSIDIZED.
- 16 Q. OKAY.
- 17 A. AND THERE PROBABLY ARE SOME OTHER REASONS IN HERE.
- 18 Q. NOW, JUST SO WE UNDERSTAND THE MECHANISM AT WORK
- 19 HERE, THE CITY HAD A GOAL OF MAKING RECYCLE PLUS SERVICES
- 20 SELF-SUFFICIENT?
- 21 A. THAT'S CORRECT.
- 22 Q. AND THE SOURCE OF REVENUE FOR THAT SERVICE WAS THE
- 23 FEES PAID BY PROPERTY OWNERS FOR THE SERVICE?
- 24 A. CORRECT.
- 25 Q. AND TO THE EXTENT THERE WAS ANY SHORTFALL IN
- 26 REVENUE, WHERE DID THE EXTRA MONEY COME FROM, THE GENERAL
- 27 FUND?
- 28 A. THE GENERAL FUND.

SUE HERFURTH, CSR #9645

1057

- 1 Q. OKAY. SO WAS ONE OF THE STATED PURPOSES OF THIS
- 2 NINE PERCENT RATE HIKE -- IT WAS A NINE PERCENT RATE HIKE?
- 3 A. IT WAS.

4 Q. WAS TO DECREASE THE RELIANCE ON THE GENERAL FUND
5 AND INCREASE THE REVENUES GENERATED BY THE FEES?

6 A. THAT'S CORRECT.

7 Q. HAD THE COUNCIL GONE THROUGH A RATE HIKE JUST PRIOR
8 TO DECEMBER?

9 A. IT HAD.

10 Q. NORMALLY, DON'T THE RATE HIKES OCCUR ON AN ANNUAL
11 BASIS?

12 A. THAT'S PROBABLY THE NORM.

13 Q. HERE WE ARE IN MAY, FIVE MONTHS LATER, AND THE
14 COUNCIL IS BEING ASKED TO CONSIDER A LARGE RATE HIKE. I
15 ASSUME NINE PERCENT IS A LARGE RATE HIKE?

16 A. IT'S VERY HIGH.

17 Q. DID YOU OR ANYONE ELSE ASK QUESTIONS OF STAFF, WHY
18 ARE WE BACK HERE IN ONLY FIVE MONTHS FOR SUCH A LARGE RATE
19 HIKE?

20 A. YES.

21 Q. WHAT DID STAFF SAY, AND WHO RESPONDED?

22 A. WELL, I'M SURE I ASKED QUESTIONS, AND IT WAS
23 PROBABLY ALONG THE LINES OF HOW CAN WE BE COMING BACK SO
24 SOON AFTER A PREVIOUS RATE HIKE ASKING FOR ADDITIONAL FUNDS?

25 Q. WHAT ANSWERS WERE YOU GIVEN?

26 A. LET ME SEE IF IT'S IN HERE. AS USUAL, THERE ARE NO
27 ANSWERS. BUT THE BOTTOM LINE WAS IT WAS TO, NOT TO BE A
28 DRAIN ON THE GENERAL FUND, TO BE SELF-SUSTAINING, TO

SUE HERFURTH, CSR #9645

1058

1 GENERATE MORE FUNDS FROM THE CUSTOMER.

2 Q. SO THE STATED ANSWER WAS INCREASED COST RECOVERY
3 AND REDUCED CONTRIBUTIONS FROM THE GENERAL FUND?

4 A. THAT'S CORRECT.

5 Q. DID THIS RATE HIKE HAVE ANYTHING TO DO, AS FAR AS
6 YOU KNEW, WITH BUILDING UP A RESERVE TO COMPENSATE NORCAL
7 FOR THE ADDITIONAL LABOR COSTS OF CWS USING TEAMSTERS
8 INSTEAD OF ILWU WORKERS?

9 A. NO. AS A MATTER OF FACT -- ACCORDING TO THE
10 MINUTES, I MENTIONED THAT I WOULD NOT BE SUPPORTING THE ITEM
11 BECAUSE OF MY BELIEF THAT THE CITY MUST HAVE GIVEN ERRONEOUS
12 INFORMATION TO COUNCILMEMBERS WHEN DECISIONS WERE MADE TO
13 CHANGE THE SERVICE, BECAUSE WE WERE SUPPOSED TO BE SAVING A
14 LOT OF MONEY AND PROVIDING BETTER SERVICES, AND YET HERE WE
15 WERE BACK A SHORT TIME AFTER ASKING FOR A SUBSTANTIAL RATE
16 INCREASE.

17 Q. WHO VOTED IN FAVOR OF THE RATE HIKE?

18 A. VOTED IN FAVOR OF IT?

19 Q. YES.

20 A. UH -- EVERYONE EXCEPT DANDO AND GREGORY, AND CHIRCO
21 WAS ABSENT.

22 Q. CHIRCO WAS ABSENT, AND YOU AND GREGORY VOTED
23 AGAINST IT?

24 A. THAT'S CORRECT.

25 Q. EVERYONE ELSE VOTED FOR IT, CORRECT?

26 A. THAT'S CORRECT.

27 Q. THAT WOULD INCLUDE MAYOR GONZALES?

28 A. THAT'S CORRECT.

SUE HERFURTH, CSR #9645

1 Q. PRIOR TO THIS MAY 27, 2002 VOTE, DID THE MAYOR OR
2 ANYONE ELSE SAY ANYTHING ABOUT REQUIRING CWS TO USE THE
3 TEAMSTERS?

4 A. NO.

5 Q. PRIOR TO THIS MAY 27, 2003 VOTE, DID THE MAYOR OR
6 ANYONE ELSE SAY ANYTHING ABOUT NORCAL, COMPENSATING NORCAL
7 FOR CWS SWITCHING TO TEAMSTERS?

8 A. NO.

9 Q. NOW, LET'S JUMP AHEAD TO THE FOLLOWING YEAR. DID
10 MAYOR GONZALES RECOMMEND AMENDING THE NORCAL AGREEMENT IN
11 THE MEMO TO THE CITY COUNCIL DATED SEPTEMBER 16, 2004?

12 WHY DON'T YOU LOOK AT EXHIBIT 42. HAVE YOU SEEN
13 THAT EXHIBIT BEFORE?

14 A. I HAVE.

15 Q. AND SO LET ME ASK THE QUESTION AGAIN. DID MAYOR
16 GONZALES RECOMMEND AMENDING THE NORCAL AGREEMENT IN A MEMO
17 SUBMITTED TO THE CITY COUNCIL DATED SEPTEMBER 16, 2004?

18 A. HE DID.

19 Q. AND IS EXHIBIT 42 A COPY OF THAT MEMO?

20 A. IT IS.

21 Q. WAS THIS MEMO SUBMITTED TO THE CITY COUNCIL?

22 A. IT WAS.

23 Q. DID THIS MEMO BECOME A PART OF THE OFFICIAL RECORD
24 FOR THE CITY COUNCIL PROCEEDINGS?

25 A. IT DID.

26 Q. IS THAT MAYOR GONZALES'S SIGNATURE ON THE MEMO?

27 A. YES.

28 Q. DID COUNCILMEMBER CHAVEZ SIGN THE MEMO?

1 A. THAT LOOKS LIKE HER SIGNATURE.

2 Q. DID YOU ALSO SIGN THE MEMO?

3 A. YES.

4 Q. DID THIS MEMO INCLUDE A RECOMMENDATION THAT THE

5 CITY PAY NORCAL FOR ADDITIONAL LABOR COSTS DUE TO CWS

6 SWITCHING TO TEAMSTERS?

7 A. YES.

8 Q. DO YOU KNOW AT WHOSE REQUEST THIS MEMO WAS

9 PREPARED?

10 A. IT WOULD HAVE BEEN RON GONZALES OR JOE GUERRA.

11 Q. WELL, WHEN YOU SAY IT WOULD HAVE BEEN, THAT MAKES

12 ME ASK WHETHER YOU'RE SPECULATING OR IF YOU HAVE SOME REASON

13 TO BELIEVE IT WAS PREPARED AT THEIR REQUEST.

14 A. I SUPPOSE YOU COULD CALL THAT SPECULATING BECAUSE I

15 WOULD NOT, I DON'T THINK THERE WOULD BE ANYONE ELSE THAT

16 WOULD ASK THEM TO PREPARE THIS MEMO.

17 Q. LET'S TRY TO GET IT ANOTHER WAY. WAS THIS MEMO

18 PREPARED AT YOUR REQUEST?

19 A. NO.

20 Q. SO WE'VE ELIMINATED YOU AS ONE OF THE

21 POSSIBILITIES, RIGHT?

22 A. THAT'S RIGHT.

23 Q. WE'LL HAVE TO TALK TO OTHER PEOPLE TO SEE IF WE CAN

24 SORT OF USE THE PROCESS OF ELIMINATION. BUT YOU DIDN'T

25 REQUEST THIS MEMO; IS THAT RIGHT?

26 A. I DID NOT.

27 Q. DID YOU INSTIGATE BRINGING THIS ISSUE BEFORE THE

28 COUNCIL?

1 A. NO.

2 Q. DO YOU KNOW WHO DID?

3 A. NO.

4 Q. BUT YOU DIDN' T?

5 A. I DID NOT.

6 Q. HOW DID YOU FIRST LEARN OF THIS MEMO?

7 A. MAYBE I'M TAKING YOUR QUESTIONS TOO LITERALLY. I'M

8 TRYING TO BE VERY ACCURATE HERE.

9 Q. LET ME ASK YOU THIS: YOU DIDN' T BRING THIS

10 AMENDMENT FORWARD TO THE COUNCIL, CORRECT?

11 A. I DID NOT.

12 Q. IT DID GO FORWARD TO THE COUNCIL?

13 A. IT DID.

14 Q. WE CAN LOGICALLY ASSUME SOMEBODY BROUGHT IT TO THE

15 COUNCIL' S ATTENTION, CORRECT?

16 A. YES.

17 Q. HOW DID YOU FIRST BECOME AWARE SOMEONE WAS BRINGING

18 THIS TO THE COUNCIL' S ATTENTION, AND BY THAT I MEAN THE

19 AMENDMENT TO THE NORCAL AGREEMENT?

20 A. JOE GUERRA.

21 Q. WHAT ABOUT JOE GUERRA?

22 A. HE SPOKE TO ME ABOUT THIS COMING BACK TO THE

23 COUNCIL.

24 Q. OKAY. WHEN DID HE SPEAK TO YOU ABOUT THAT?

25 A. I DON' T HAVE A DATE, BUT IF I WERE TO --

26 Q. WELL, WHEN IN RELATION TO THE DATE ON THE MEMO DID

27 HE SPEAK TO YOU? WAS IT BEFORE OR AFTER THE MEMO?

28 A. IT WAS BEFORE.

SUE HERFURTH, CSR #9645

1062

1 Q. CAN YOU GIVE US SOME TIME FRAME OF HOW MUCH BEFORE?

2 A. NOT UNLESS I'M GUESSING. I CAN TELL YOU THE NORM
3 IS IT PROBABLY WOULD HAVE BEEN A WEEK TO 10 DAYS BEFORE.

4 Q. THAT'S YOUR CUSTOMARY HABIT ABOUT THESE THINGS?

5 A. THAT'S RIGHT.

6 Q. AND WAS IT IN A FACE-TO-FACE MEETING OR BY PHONE,
7 E-MAIL, OR SOME OTHER MEANS OF COMMUNICATING?

8 A. FACE TO FACE.

9 Q. WHERE DID IT TAKE PLACE?

10 A. IN MY OFFICE.

11 Q. WHO ELSE WAS PRESENT?

12 A. TO THE BEST OF MY KNOWLEDGE, IT WAS JUST JOE AND
13 MYSELF.

14 Q. WHO ARRANGED THE MEETING?

15 A. JOE.

16 Q. AND WHAT HAPPENED AT THE MEETING?

17 A. HE MENTIONED THAT THERE ARE COMPLICATED ISSUES WITH
18 NORCAL AND THEIR EMPLOYEES, AND THAT THEY WERE NOT ABLE TO
19 PAY THE AMOUNT OF MONEY THAT THEIR EMPLOYEES WERE, AND I
20 DON'T REMEMBER IF IT WAS EXPECTING OR DUE.

21 Q. OR SEEKING?

22 A. OR SEEKING, BUT IT WAS, THE IMPLICATION WAS THAT
23 THEY WERE NOT BEING PAID WHAT THEY WANTED.

24 Q. DID YOU ASK MR. GUERRA WHY THAT WAS THE CITY'S
25 PROBLEM?

- 26 A. I DID.
27 Q. WHAT DID HE SAY?
28 A. WITH THAT QUESTION OR A QUESTION LIKE THAT, IT WAS

SUE HERFURTH, CSR #9645

1063

- 1 THAT IT'S THE CITY'S PROBLEM BECAUSE WE WANT TO MAKE SURE
2 THAT PEOPLE HAVE THEIR GARBAGE PICKED UP IN A TIMELY MANNER
3 WITH GOOD SERVICES, PEACE, AND WE'RE STILL GETTING A CHEAPER
4 RATES THAN OTHER AREAS AROUND US.
5 Q. LET ME PROBE THAT A LITTLE BIT, IF I MIGHT.
6 DID MR. GUERRA INDICATE TO YOU IT WAS THE TEAMSTER
7 DRIVERS OR THE RECYCLING WORKERS THAT HAD THE PROBLEM WITH
8 THE PAY?
9 A. I DON'T REMEMBER SPECIFICALLY. IF YOU WANT ME TO
10 TALK ABOUT IT A LITTLE BIT, I MIGHT BE ABLE TO --
11 Q. SURE. BEFORE YOU DO THAT, WHY I'M ASKING, THE
12 PEOPLE WHO WORK FOR CWS IN THE RECYCLE PLANT, THEY DON'T
13 PICK UP THE GARBAGE FROM CURBSIDE, AND WHATEVER THEY DO DOES
14 NOT AFFECT THE PICKUP OF TRASH, RIGHT?
15 A. RIGHT.
16 Q. NORCAL, AS YOU RECALL, WAS RESPONSIBLE FOR USING
17 TEAMSTERS TO PICK UP THE MATERIALS FROM PEOPLE'S HOMES,
18 RIGHT?
19 A. THAT'S CORRECT.
20 Q. NORCAL HAD THE ABILITY TO DIVERT THE RECYCLABLES TO
21 ANOTHER FACILITY IN THE EVENT THAT CWS COULDN'T DO THE JOB,
22 RIGHT?
23 A. THAT'S CORRECT.

24 Q. AS A MATTER OF FACT, THAT'S WHAT THEY DID BECAUSE
25 CWS WASN'T ABLE TO GET ONLINE ON JULY 1, '02 AS REQUIRED?

26 A. THAT'S RIGHT.

27 Q. FOR A PERIOD OF MONTHS OR SO, NORCAL WAS PICKING UP
28 RECYCLABLES ALONG WITH THE TRASH, AND RECYCLABLES WERE GOING

SUE HERFURTH, CSR #9645

1064

1 TO A DIFFERENT FACILITY, NOT CWS?

2 A. THAT'S RIGHT.

3 Q. SO IF THE ISSUE WAS CWS EMPLOYEES BEING UNHAPPY
4 ABOUT THEIR WAGES, THAT WOULD NOT AFFECT TRASH PILING UP ON
5 LAWNS, RIGHT?

6 A. THAT'S CORRECT. THE SERVICE THEY PROVIDED AS
7 EXPECTED SERVICES WERE THAT THE TRASH WOULD BE PICKED UP AND
8 THAT THERE BE RECYCLING WHICH WOULD ALSO BE PICKED UP, AND
9 THE PURPOSE OF THE RECYCLING, IT WAS THAT IT WOULD MEET
10 THE STATE GOALS OF NOT FILLING UP LANDFILLS, SO THOSE WERE
11 IMPORTANT SERVICES.

12 AROUND THAT SAME TIME, THERE WAS, I'LL CALL IT
13 UNREST, BECAUSE I DON'T KNOW IF THERE WAS ACTUALLY A LABOR
14 STOPPAGE, BUT THERE WAS UNREST AMONGST THOSE THAT PROVIDED
15 THE SERVICES. AND I DON'T REMEMBER CLEARLY IF IT WAS NORCAL
16 THAT PICKED UP THE GARBAGE OR IF IT WAS IN THE RECYCLING
17 PLANT. BUT THERE WERE ACCUSATIONS THAT THE DRIVERS WERE
18 COMMINGLING THE TRASH AS IT WAS BEING PICKED UP, THE GARBAGE
19 AND THE RECYCLING. AND CALIFORNIA WASTE SOLUTIONS WERE NOT
20 ABLE TO MEET THE GOALS THEY WERE TRYING TO MEET BECAUSE THE
21 GARBAGE WAS MIXED UP.

22 SO I KNEW THAT THERE WAS UNREST AMONGST THE
23 INDIVIDUALS THAT WERE PROVIDING THESE SERVICES, PLURAL.

24 Q. DID MR. GUERRA DISTINGUI SH BETWEEN THE NORCAL
25 TEAMSTER DRIVERS WHO DID THE PICKUP VERSUS THE CWS WORKERS
26 WHO DID THE RESORTING OF THE RECYCLABLES AT THE FACILITY?

27 A. I CAN'T SAY FOR SURE, BUT I CAN TELL YOU TO MY BEST
28 RECOLLECTION. AND MAYBE THIS WAS SOMETHING THAT I CAME TO

SUE HERFURTH, CSR #9645

1065

1 THE CONCLUSION MYSELF, WAS THAT IT WAS CALIFORNIA WASTE
2 SOLUTIONS, THE EMPLOYEES THERE THAT WERE NOT GETTING THE
3 FUNDS THAT THEY HAD COMING.

4 Q. AND THAT WOULD NOT IMPACT THE PICKUP OF THE TRASH,
5 THE PICKUP AND RESORTING OF THE RECYCLABLES WAS AT THE MRF
6 FACILITY, RIGHT?

7 A. THAT'S CORRECT.

8 Q. JUST LIKE WHEN THE CONTRACT STARTED ON JULY 1, '02
9 WHEN THE MRF FACILITY WAS NOT READY TO BE USED, RIGHT?

10 A. THAT'S CORRECT.

11 Q. SOMEHOW THE CITY WAS ABLE TO FUNCTION WITHOUT
12 PROBLEMS, RIGHT?

13 A. THAT'S RIGHT.

14 Q. NOW, BY SIGNING ONTO THIS MEMO, WERE YOU INDICATING
15 YOUR APPROVAL OR AGREEMENT WITH WHAT THE MEMO SAID IN SOME
16 FASHION?

17 A. YES.

18 Q. IT WAS MR. GUERRA WHO ASKED YOU TO SIGN THE MEMO?

19 A. IT WAS.

20 Q. AND SO WOULD IT BE FAIR TO SAY THAT BASED ON WHAT
21 MR. GUERRA TOLD YOU, YOU AGREED TO SIGN THE MEMO?

22 A. THAT' S CORRECT.

23 Q. BUT YOU' RE NOT CERTAIN WHAT HE TOLD YOU?

24 A. NO, I AM. AND I JUST MENTIONED TO YOU THERE WAS,
25 THERE ARE LABOR, THERE WAS LABOR UNREST AMONGST THOSE THAT
26 WERE PROVIDING THE SERVICES.

27 Q. WELL, DID HE SAY THAT THE GARBAGE THERE WOULD BE
28 GARBAGE PILING UP ON THE STREETS IF WE DIDN' T GO THROUGH

SUE HERFURTH, CSR #9645

1066

1 WITH THE AMENDMENT?

2 A. NO.

3 Q. DID YOU THINK THAT WOULD BE THE CASE?

4 A. I DID NOT.

5 Q. SO WHAT WAS YOUR REASONING FOR SIGNING ON TO THIS
6 MEMO?

7 A. THE REASON I SIGNED ON TO THE MEMO IS BECAUSE AFTER
8 I HEARD OF THE UNREST OR TURMOIL THAT WAS OCCURRING AMONGST
9 THE TWO, NORCAL AND THE RECYCLING EMPLOYEES AT THE RECYCLE
10 PROGRAM, I WENT TO VISIT THE RECYCLING PROGRAM. AND AFTER
11 SEEING THE INDIVIDUALS THAT WERE PROVIDING THE SERVICES, I
12 FELT THAT IF WE WERE NOT PAYING THEM THEIR, THE INCOME THEY
13 DESERVED OR THE BENEFITS THEY DESERVED, THAT WAS, IT WAS
14 UNFAIR.

15 Q. WHO WAS SUPPOSED TO DECIDE WHAT THE INCOME AND
16 BENEFITS WAS?

17 A. IT WAS PROBABLY THE COMPANY.

18 Q. AS WE SAW THIS AFTERNOON AT LEAST, THE AGREEMENT
19 WITH NORCAL, PARAGRAPH 17. 3. 02 I THINK IT WAS, OR 02. 03,
20 WOULD PROVIDE ADDITIONAL COMPENSATION TO NORCAL FOR
21 ADDITIONAL WAGE COSTS AFTER THE DATE OF AGREEMENT, RIGHT?

22 A. THAT'S CORRECT.

23 Q. SO DID YOU BELIEVE THE CITY HAD ANY LEGAL
24 OBLIGATION TO PAY THE COSTS?

25 A. NO LEGAL OBLIGATION.

26 Q. AS A FORMER COUNCILMEMBER, DID YOU THINK THAT THE
27 CITY COULD JUST GIVE AWAY THE TAXPAYERS' MONEY WITHOUT A
28 LEGAL OBLIGATION TO DO SO?

SUE HERFURTH, CSR #9645

1067

1 A. NO. I DID NOT.

2 Q. SO YOU KNEW THAT THERE HAD TO BE AT LEAST SOME
3 AUTHORIZATION FOR DISBURSEMENT OF PUBLIC FUNDS, RIGHT?

4 A. THAT'S CORRECT.

5 Q. THAT'S SOMETHING I TAKE IT MOST ELECTED OFFICIALS
6 YOU WOULD EXPECT TO KNOW?

7 A. YES.

8 Q. DID YOU SPEAK DIRECTLY WITH MAYOR GONZALES BEFORE
9 SIGNING THIS MEMO?

10 A. I MAY HAVE. AGAIN, I JUST CAN'T REMEMBER A
11 SPECIFIC DATE BEFORE SIGNING THE MEMO.

12 Q. YOU DON'T FEEL YOU HAVE SUFFICIENT RECOLLECTION
13 THAT YOU CAN GIVE EVIDENCE ABOUT WHAT MAY HAVE BEEN SAID?

14 A. NO. I CAN ONLY TELL YOU WHY I SIGNED THE MEMO.

15 Q. LET ME ASK YOU SOME QUESTIONS ABOUT THAT.

16 WE GO TO PAGE TWO OF THE MEMO, THERE'S A LINE IN
17 THE SECOND PARAGRAPH THAT SAYS:

18 AFTER COUNCIL APPROVAL, THE MAYOR'S OFFICE
19 LEARNED THAT THE WORKERS TO BE RETAINED FROM WASTE
20 MANAGEMENT WOULD BE EXPECTED TO CHANGE UNIONS.

21 DO YOU SEE THAT LINE?

22 A. I DO.

23 Q. OKAY. WHAT COUNCIL APPROVAL DID YOU UNDERSTAND THE
24 REFERENCE TO BE MAKING?

25 A. THE CONTRACT THAT WE JUST DISCUSSED, THE NORCAL
26 CONTRACT.

27 Q. THE ORIGINAL AGREEMENT WITH NORCAL?

28 A. OR THE SECOND, BUT YES, THE FINAL AGREEMENT WITH

SUE HERFURTH, CSR #9645

1068

1 NORCAL.

2 Q. SO THAT WOULD HAVE BEEN AFTER THE DECEMBER 12, 2000
3 VOTE?

4 A. THAT'S CORRECT.

5 Q. DID MR. GUERRA OR THE MAYOR ELABORATE ON THAT POINT
6 AND SHARE WITH YOU HOW IT IS THEY LEARNED ABOUT THE
7 SITUATION AFTER THE ORIGINAL COUNCIL VOTE IN 2000 ON THE
8 AGREEMENT?

9 A. I DON'T RECALL THEM TELLING ME. ARE YOU REFERRING
10 TO DIFFERENT UNIONS AND WHICH UNION SHOULD PROVIDE --

11 Q. NO, I'M TALKING ABOUT THE STATEMENT IN THE MEMO YOU
12 SIGNED ON TO THAT READS:

13 AFTER COUNCIL APPROVAL, THE MAYOR'S OFFICE

14 LEARNED THAT THE WORKERS TO BE RETAINED FROM WASTE
15 MANAGEMENT WOULD BE EXPECTED TO CHANGE UNIONS.

16 DO YOU SEE THAT SENTENCE?

17 A. I DO.

18 Q. IN OTHER WORDS, NORCAL AND CWS REPLACED WASTE
19 MANAGEMENT?

20 A. RIGHT.

21 Q. AND THE STATEMENT IN THE MEMO YOU SIGNED ON TO SAYS
22 THAT AFTER COUNCIL APPROVAL, THE MAYOR'S OFFICE LEARNED
23 ABOUT THAT SITUATION, CORRECT?

24 A. THAT'S RIGHT.

25 Q. AND YOU CONSTRUED AFTER COUNCIL APPROVAL TO MEAN
26 SOMETIME AFTER THE YEAR 2000?

27 A. RIGHT.

28 Q. SO WEREN'T YOU CURIOUS TO LEARN HOW THEY LEARNED

SUE HERFURTH, CSR #9645

1069

1 ABOUT THIS?

2 A. YES, BUT I CAN'T SAY SPECIFICALLY HOW JOE TOLD ME
3 ABOUT THAT, BUT I DID HAVE DISCUSSIONS WITH HIM ABOUT THE
4 TWO DIFFERENT UNIONS AND THAT THERE WAS, IN ORDER TO KEEP
5 PEACE WITHIN LOCAL UNIONS THAT THERE WOULD BE A CHANGE.

6 Q. AND WHEN DID YOU HAVE THIS DISCUSSION WITH
7 JOE GUERRA?

8 A. I BELIEVE IT WAS RIGHT BEFORE THE SIGNING OF THIS
9 MEMO.

10 Q. RIGHT. THAT'S HOW YOU LEARNED ABOUT IT, RIGHT?

11 A. THAT'S CORRECT.

12 Q. BUT DID YOU ASK MR. GUERRA HOW HE LEARNED ABOUT IT?

13 A. UH -- I DID NOT.

14 Q. IS THERE A REASON WHY YOU DIDN' T?

15 A. AS I SAID BEFORE, THERE WAS A LOT OF UNREST AMONGST
16 UNIONS AND LABOR LEADERS AT THAT TIME. AND I ASSUMED THAT
17 IT WAS THROUGH THAT UNREST THAT THE MAYOR AND JOE HAD
18 CONVERSATIONS WITH UNION LEADERS AND FOUND OUT THERE WAS
19 GOING TO BE A CHANGE THAT WAS GOING TO COST MORE MONEY.

20 Q. YOU WENT THROUGH, WITH THE REST OF THE CITY
21 COUNCIL, THAT LENGTHY PROCESS TO DEVELOP AN RFP FOR THIS
22 SERVICE, RIGHT?

23 A. THAT' S CORRECT.

24 Q. THE RFP HAD A PROVISION FOR LABOR PEACE, RIGHT?

25 A. THAT' S CORRECT.

26 Q. THE RFP ISSUED AND MULTIPLE PROPOSALS WERE
27 SUBMITTED, CORRECT?

28 A. CORRECT.

SUE HERFURTH, CSR #9645

1070

1 Q. YOU HAD MEETINGS AND DISCUSSIONS ABOUT THE
2 PROPOSALS, RIGHT?

3 A. CORRECT.

4 Q. A DECISION WAS MADE TO CHOOSE HAULERS?

5 A. RIGHT.

6 Q. NORCAL WAS ONE?

7 A. THAT' S CORRECT.

8 Q. WEREN' T YOU THE LEAST BIT CONCERNED WHY IT IS THIS
9 WHOLE PROCESS HAD NOT UNEARTHED THIS LABOR PEACE ISSUE UNTIL

10 2004?

11 A. IN RETROSPECT, I SHOULD HAVE BEEN. AT THAT TIME I
12 WAS NOT, BECAUSE VERY OFTEN WE WOULD HAVE ISSUES BROUGHT
13 BEFORE THE COUNCIL DEALING WITH LABOR PEACE THAT I MAY NOT
14 UNDERSTAND ALL THE NUANCES OF OR KNOW THE NUANCES OF.

15 Q. LET'S LOOK FURTHER DOWN ON THIS MEMO. THAT SAME
16 PARAGRAPH CONTAINS THE FOLLOWING SENTENCE, DOES IT NOT:

17 TO CONFORM TO COUNCIL DIRECTION, THE MAYOR'S
18 OFFICE CONVENED A MEETING BETWEEN NORCAL AND THE
19 LEADERSHIP OF THE TEAMSTER'S LOCAL AND A
20 REPRESENTATIVE OF THE CENTRAL LABOR COUNCIL TO
21 IDENTIFY SOLUTIONS OF THE JURISDICTIONAL ISSUE.

22 HAVE I READ THAT CORRECTLY?

23 A. YOU HAVE.

24 Q. OKAY. WHAT DIRECTION OF THE COUNCIL DOES THE MEMO
25 REFER TO?

26 A. I DON'T KNOW.

27 Q. DID YOU READ THIS MEMO BEFORE SIGNING IT?

28 A. I DID.

SUE HERFURTH, CSR #9645

1071

1 Q. WELL, WHEN YOU READ THAT SENTENCE, DID A QUESTION
2 OCCUR TO YOU ABOUT IT?

3 A. WHAT I WOULD RELATE THAT TO MEAN WAS THERE WAS A
4 DIRECTION ON LABOR PEACE. AND SO THIS MEMO BEGAN BECAUSE OF
5 THE DISSENSION THAT HAD OCCURRED WITHIN THE LABOR
6 ORGANIZATIONS. I ASSUMED THAT THIS MEANT THAT THE MAYOR
7 WOULD CALL THOSE TWO GROUPS TOGETHER AND TRY TO RESOLVE

8 THOSE LABOR ISSUES THAT WERE OCCURRING AT THAT TIME.

9 Q. WHY WAS IT THE MAYOR'S JOB TO RESOLVE THIS LABOR
10 ISSUE?

11 A. IT WOULD NOT HAVE BEEN, OR IT WASN'T NECESSARILY
12 HIS JOB.

13 Q. BUT THIS MEMO SUGGESTS, DOES IT NOT, THAT THE
14 COUNCIL DIRECTED YOUR MAYOR TO GET INVOLVED IN THE LABOR
15 DISPUTE AND WORK IT OUT. ISN'T THAT WHAT THIS LINE
16 SUGGESTS?

17 A. UH -- NO. NOT TO ME. IT SAYS THAT TO CONFORM TO
18 COUNCIL DIRECTION, AND COUNCIL DIRECTION WAS FOR LABOR
19 PEACE. SO TO CONFORM TO THAT DIRECTION, THE MAYOR CALLED
20 THOSE INDIVIDUALS TOGETHER.

21 Q. LOOK. THE COUNCIL DIRECTED THAT A CONTRACT BE
22 NEGOTIATED WITH NORCAL AFTER THE DECEMBER 12 VOTE?

23 A. RIGHT.

24 Q. THAT AUTHORIZED THE MAYOR TO MEET WITH
25 NORCAL -- LET ME FINISH -- AND HAMMER OUT THE WORDING OF THE
26 CONTRACT?

27 A. NO.

28 Q. SO WHY DOES THE COUNCIL DIRECTION THAT THERE BE

SUE HERFURTH, CSR #9645

1072

1 LABOR PEACE AT THE HAULERS AUTHORIZE THE MAYOR TO CONVENE A
2 MEETING WITH NORCAL AND LABOR PEOPLE?

3 A. IT DIDN'T AUTHORIZE THE MAYOR TO DO SO.

4 Q. SO IS THIS STATEMENT ABOUT CONFORMING TO COUNCIL
5 DIRECTION, IS THAT A TRUE STATEMENT AND AN ACCURATE

6 STATEMENT?

7 A. IT'S NOT A LITERAL STATEMENT OR AN ACCURATE
8 STATEMENT.

9 Q. THAT SAME PARAGRAPH STATES EVENTUALLY THE
10 JURISDICTIONAL ISSUE WAS RESOLVED WITH THE NEUTRALITY
11 AGREEMENT THAT CWS SIGNED WITH THE TEAMSTERS, AND THE
12 TEAMSTERS WERE SELECTED BY THE WORKERS TO MAINTAIN
13 JURISDICTION. DO YOU SEE THAT STATEMENT?

14 A. I DO.

15 Q. DID MR. GUERRA OR ANYONE ELSE EXPLAIN TO YOU WHEN
16 THAT NEUTRALITY AGREEMENT WAS SIGNED?

17 A. NO.

18 Q. WOULD IT SURPRISE YOU IT TO LEARN IT WAS SIGNED ON
19 DECEMBER 11 OF 2000?

20 A. IT WOULD HAVE SURPRISED ME.

21 Q. WHY DON'T WE HAVE YOU LOOK AT EXHIBIT 68. HAVE YOU
22 SEEN THAT DOCUMENT BEFORE?

23 A. I HAVE NOT.

24 Q. WHAT'S THE DATE ON THE LAST PAGE OF THAT DOCUMENT
25 WITH MR. DUONG?

26 A. 12/11 OF 2000.

27 Q. SO THAT WOULD BE ALMOST FOUR YEARS PRIOR TO THIS
28 MEMO YOU COSIGNED, CORRECT?

SUE HERFURTH, CSR #9645

1073

1 A. THAT'S CORRECT.

2 Q. SO SEEING THIS NEUTRALITY AGREEMENT BETWEEN THE
3 TEAMSTERS AND CWS DATED DECEMBER 11, 2000, DOES THAT

4 INDICATE TO YOU THAT THE STORY THAT'S TOLD IN THIS SECOND
5 PARAGRAPH ON PAGE TWO OF THE MAYOR'S MEMORANDUM DATED
6 SEPTEMBER 10, 2004 WAS NOT ACCURATE?

7 A. HAVING SEEN THIS DOCUMENT, THAT PARAGRAPH IS NOT
8 CORRECT. IT'S NOT ACCURATE.

9 Q. AND IF YOU HAD KNOWN THAT IN FACT CWS HAD SIGNED A
10 NEUTRALITY AGREEMENT BACK IN DECEMBER OF 2000, THE DAY
11 BEFORE THE SECOND COUNCIL VOTE ON THE NORCAL PROPOSAL, WOULD
12 YOU HAVE CHANGED YOUR ACTIONS IN ANY WAY WITH RESPECT TO
13 THIS MEMO?

14 A. YEAH. IF IT WERE A DONE DEAL, I CERTAINLY WOULD
15 HAVE NOT, WOULDN'T HAVE SEEN THE REASON TO SIGN THIS, PLUS I
16 WOULD HAVE FELT AS THOUGH I HAD BEEN DUPED IN OTHER
17 DISCUSSIONS THAT I WASN'T PRIVY TO IN COMING UP FOR THE
18 REASONING TO COME UP WITH THIS MEMO.

19 Q. LET ME ASK YOU THIS: DID YOU WANT TO LOOK AT THE
20 MEMO, THE NEUTRALITY AGREEMENT, SOME MORE?

21 A. NO.

22 Q. IT'S AN IMPORTANT QUESTION. DID THE MAYOR OR
23 ANYONE ELSE TELL YOU PRIOR TO YOUR SIGNING ON TO THIS MEMO
24 THAT ON OCTOBER 6, 2000, THE FRIDAY BEFORE THE FIRST CITY
25 COUNCIL VOTE ON THE NORCAL PROPOSAL, THE ORIGINAL PROPOSAL,
26 HE TOLD, THE MAYOR TOLD NORCAL THAT HE WOULD REALLY LIKE TO
27 SEE CWS'S FACILITY BE A TEAMSTER FACILITY AND THAT HE ASKED
28 NORCAL IF THEY WOULD MAKE THAT HAPPEN? DO YOU HAVE ANY IDEA

SUE HERFURTH, CSR #9645

1074

1 ANYTHING LIKE THAT HAD HAPPENED?

2 A. NO.

3 Q. IS THAT SOMETHING THAT WOULD HAVE BEEN IMPORTANT
4 FOR YOU TO KNOW BEFORE SIGNING ON TO THIS MEMO AND THE
5 COUNCIL, SUBSEQUENT COUNCIL VOTE ON THE AMENDMENT?

6 A. ABSOLUTELY.

7 Q. WHY IS THAT?

8 A. BECAUSE I WAS OBVIOUSLY MAKING AN ASSUMPTION BASED
9 ON INCORRECT INFORMATION. AND JUST TO GO BEYOND THAT, IF
10 THE MAYOR HAD ALREADY MADE THIS AGREEMENT, IT SEEMS A BIT OF
11 A SHAM THAT WE WENT THROUGH SOME OF THE DISCUSSIONS THAT WE
12 HAD PRIOR TO THE APPROVAL OF THE CONTRACT.

13 Q. PRIOR TO SIGNING ON TO THIS SEPTEMBER 16, 2004
14 MEMO, DID THE MAYOR OR ANYONE ELSE TELL YOU THAT AT THE SAME
15 OCTOBER 6, 2000 MEETING ON THE FRIDAY BEFORE THE FIRST CITY
16 COUNCIL VOTE ON THE ORIGINAL NORCAL PROPOSAL, THE MAYOR TOLD
17 NORCAL, YOU DO IT, WE'LL MAKE YOU WHOLE?

18 A. NO, I DID NOT KNOW THAT.

19 Q. IS THIS THE FIRST YOU'RE HEARING ABOUT THAT?

20 A. NO, I HEARD ABOUT IT -- WELL, I'VE HEARD ABOUT IT
21 SPECULATIVELY IN THE PAPERS AND OTHER NEWS, BUT THIS IS THE
22 FIRST TIME THAT I HAVE SEEN THE DOCUMENTS TO SUBSTANTIATE
23 IT.

24 Q. YOU MEAN SINCE THE GRAND JURY INVESTIGATION?

25 A. THAT'S CORRECT.

26 Q. IS THAT INFORMATION THAT WOULD HAVE BEEN IMPORTANT
27 FOR YOU TO KNOW BEFORE SIGNING ON TO THE MEMO OR VOTING ON
28 THIS AMENDMENT?

1 A. IT WOULD HAVE BEEN VERY IMPORTANT.

2 Q. WHY DID YOU SAY THAT?

3 A. BECAUSE I THINK I DESERVE TO HAVE THE FULL
4 INFORMATION THAT COVERED PREVIOUS INVOLVEMENTS OR
5 NEGOTIATIONS WITH THE MAYOR'S OFFICE.

6 Q. IF YOU HAD KNOWN BEFORE VOTING ON THIS AMENDMENT IN
7 2004 THAT THERE HAD BEEN A MEETING WAY BACK ON OCTOBER 6,
8 2000, THE FRIDAY BEFORE THE FIRST COUNCIL VOTE ON THE
9 ORIGINAL NORCAL PROPOSAL, WHERE THE MAYOR MADE COMMENTS TO
10 NORCAL'S CEO THAT HE WOULD REALLY LIKE TO SEE CWS BE A
11 TEAMSTER'S FACILITY AND THAT HE WANTED NORCAL TO MAKE THAT
12 HAPPEN, AND THAT IF NORCAL MADE THAT HAPPEN HE WOULD MAKE
13 THEM WHOLE, WHAT MIGHT YOU HAVE DONE DIFFERENTLY FROM WHAT
14 YOU DID?

15 A. WELL, AS WE MENTIONED EARLIER, THE MAYOR DOESN'T
16 HAVE ANY ADDITIONAL WEIGHT ON THE CITY COUNCIL THAN ANY
17 OTHER COUNCILMEMBERS. SO IT'S NOT WITHIN THE PURVIEW OF THE
18 MAYOR TO MAKE THOSE KINDS OF COMMITMENTS.

19 AND AGAIN, MAKING THOSE COMMITMENTS AND NOT
20 ADVISING THE REST OF THE COUNCILMEMBERS WAS DECEPTIVE AND
21 SHOULD HAVE BEEN BROUGHT TO LIGHT.

22 Q. LET ME ASK YOU THIS: AS AN ELECTED OFFICIAL, IF
23 THE CONVERSATION THAT I REPRESENTED TO YOU TOOK PLACE, DOES
24 IT SET OFF ANY KIND OF WARNING BELLS AS TO THE LEGALITY OF
25 THIS CONVERSATION TAKING PLACE?

26 A. IT DOES.

27 Q. HOW IS THAT?

28 A. IT'S ILLEGAL.

1 Q. WHY DO YOU THINK THAT?

2 A. WELL, YOU CAN'T -- AS WE'VE LOOKED AT THE OTHER
3 MEMO FROM CITY ATTORNEY, YOU CAN'T MAKE A REQUEST FOR A
4 PARTICULAR UNION TO REPRESENT A PARTICULAR GROUP OF WORKERS
5 BASED ON GETTING A CONTRACT. AND AGAIN, THE MAYOR HAS NO
6 MORE AUTHORITY THAN THE REST OF THE COUNCILMEMBERS, AND THE
7 COUNCILMEMBERS DID NOT HAVE THAT AUTHORITY TO NEGOTIATE
8 CONTRACTS.

9 Q. OKAY. LET ME TURN TO ANOTHER PORTION OF THIS MEMO.
10 IF YOU WOULD TURN TO PAGE THREE, THE FIRST FULL PARAGRAPH,
11 IS THERE A LINE THAT READS, "THE HIGHER COSTS WILL NOT
12 INCREASE RATES FOR OUR RESIDENTS. "

13 DOES THAT LINE APPEAR IN THE MEMO?

14 A. IT DOES.

15 Q. SO YOU UNDERSTOOD THAT YOU WERE LOOKING AT
16 APPROXIMATELY A \$10 MILLION OR \$11 MILLION INCREASE IN
17 COMPENSATION TO NORCAL ON THIS ISSUE WITH THIS AMENDMENT?

18 A. I DID.

19 Q. HOW DID YOU THINK THAT PAYING NORCAL AN ADDITIONAL
20 \$11 MILLION WOULD NOT RESULT IN HIGHER COSTS FOR THE
21 RESIDENTS?

22 A. BECAUSE THE RATES WERE SO MUCH LOWER THAN OTHER
23 HAULERS HAD PROPOSED THAT WE HAD, YOU SHOULD BE ABLE TO
24 COVER THAT WITHOUT RATE INCREASES WITH THIS MONEY.

25 Q. I'M HAVING TROUBLE FOLLOWING YOUR LOGIC HERE.

26 THE RATES ARE SET BASED ON WHAT THE NORCAL
27 AGREEMENT PROVIDES FOR, RIGHT?

28 A. RIGHT.

- 1 Q. AND THE GOAL IS TO GET 100 PERCENT COST RECOVERY?
- 2 A. THAT' S CORRECT.
- 3 Q. ANY SHORTFALLS ARE MADE UP FROM THE GENERAL FUND?
- 4 A. THAT' S RIGHT.
- 5 Q. IN 2004, WHAT WAS THE CONDITION OF THE GENERAL
- 6 FUND?
- 7 A. IT WAS LACKING, IT WAS STRUGGLING.
- 8 Q. IT WAS LACKING?
- 9 A. IT WAS STRUGGLING.
- 10 Q. IN ACCOUNTING PARLANCE, IT' S USUALLY GOOD WHEN IT' S
- 11 IN BLACK AFTER IT WAS IN THE RED. WAS IT IN THE RED?
- 12 A. NO. WE ALWAYS HAD A BALANCED BUDGET, BUT WE WERE
- 13 CUTTING SERVICE. WE WERE DECREASING.
- 14 Q. IF RATES WERE SET BASED ON THE EXISTING AGREEMENT
- 15 WITH NORCAL, HOW COULD YOU MODIFY THE AGREEMENT TO PROVIDE
- 16 FOR THAT ADDITIONAL \$11 MILLION PAYMENT AND NOT HAVE TO
- 17 INCREASE RATES?
- 18 A. THE, AGAIN, THE RESPONSE FROM STAFF WAS CONTINUALLY
- 19 THAT THESE RATES ARE SO MUCH LOWER THAT IF WE WERE TO HAVE
- 20 HIRED ANOTHER HAULER, THAT WE WOULD HAVE HAD TO RAISE RATES
- 21 ANYWAY BECAUSE IT WAS GOING TO BE HIGHER, THE SERVICE COST
- 22 WOULD BE HIGHER.
- 23 Q. WHICH STAFF?
- 24 A. CITY STAFF.
- 25 Q. WHO?
- 26 A. CARL MOSHER.

27 Q. OKAY. BUT WHY ARE YOU CONSIDERING CHANGING
28 HAULERS? YOU HAVE AN EXISTING CONTRACT WITH NORCAL, WHY

SUE HERFURTH, CSR #9645

1078

1 WOULD YOU BE CHANGING HAULERS?

2 A. NO, I'M NOT SAYING CHANGING FROM NORCAL. I'M
3 SAYING WHEN THE CONTRACT WAS AWARDED TO NORCAL THAT
4 SUPPOSEDLY THE RATES WERE SO LOW THAT WE WERE SAVING OUR
5 RATEPAYERS MONEY.

6 Q. LET'S ME TRY IT ANOTHER WAY. PRIOR TO THE 2004
7 AMENDMENT, YOU HAD IN PLACE A RATE STRUCTURE THAT PAYS A
8 LARGE PORTION OF THE COSTS OF PAYING NORCAL FOR THE SERVICE,
9 RIGHT?

10 A. RIGHT.

11 Q. AT LEAST 90 PERCENT OR THEREABOUTS?

12 A. THAT'S CORRECT.

13 Q. MAYBE A LITTLE HIGHER, RIGHT?

14 A. IT COULD BE.

15 Q. NOW, YOU'RE GOING TO PAY NORCAL AN ADDITIONAL \$11
16 MILLION, APPROXIMATELY \$2 MILLION A YEAR OVER FIVE YEARS,
17 RIGHT?

18 A. THAT'S RIGHT.

19 Q. HOW IS IT POSSIBLE THE RATES DON'T HAVE TO INCREASE
20 UNLESS YOU DIP INTO THE GENERAL FUND?

21 A. YOU WOULD TAKE IT FROM THE GENERAL FUND.

22 Q. SO THIS SENTENCE DOESN'T TELL THE WHOLE STORY ABOUT
23 THE RATES, DOES IT, BECAUSE IT DOESN'T TELL THE READER, WE
24 DON'T HAVE TO INCREASE -- STRIKE THAT. ARE YOU SAYING,

25 WOULD IT BE MORE ACCURATE IF THE MEMO HAD SAID, WE DON'T
26 HAVE TO INCREASE THE RATES BECAUSE WE CAN DIP INTO THE
27 GENERAL FUND FOR MORE MONEY?

28 A. THAT WOULD HAVE BEEN MORE ACCURATE.

SUE HERFURTH, CSR #9645

1079

1 Q. DIPPING INTO THE GENERAL FUND AT A TIME WHEN YOU'RE
2 ALREADY CUTTING BACK ON SERVICES, WOULD THAT HAVE BEEN A
3 DESIRABLE OUTCOME?

4 A. NO.

5 Q. AND IS THAT INFORMATION THAT YOU THINK WOULD HAVE
6 BEEN IMPORTANT FOR THE WHOLE COUNCIL TO KNOW, NAMELY THAT BY
7 PASSING THIS AMENDMENT AND KEEPING THE RATES THE SAME, IT
8 NECESSARILY REQUIRED DIPPING INTO THE GENERAL FUND FOR A
9 LARGER AMOUNT?

10 A. IT WOULD HAVE BEEN A MORE DIRECT WAY OF ADVISING
11 COUNCILMEMBERS OF THAT.

12 Q. NOT JUST MORE DIRECT, IT WOULD HAVE BEEN IMPORTANT
13 INFORMATION MEMBERS WOULD HAVE WANTED TO KNOW.

14 A. YES.

15 Q. SOMETHING THAT MIGHT HAVE SWAYED THEIR VOTE ON THIS
16 ISSUE, RIGHT?

17 A. THAT'S CORRECT. CAN I RESPOND?

18 Q. SURE.

19 A. IT WOULD HAVE BEEN MORE DIRECT AND MORE ACCURATE TO
20 HAVE THE GENERAL FUND MENTIONED IN THIS MEMO, BUT I DARE SAY
21 THAT MOST COUNCILMEMBERS, IF YOU WERE TALKING ABOUT A
22 SERVICE COSTING MORE AND YOU'RE NOT GOING TO RAISE THE

23 RATES, MOST COUNCILMEMBERS WOULD EQUATE THAT TO BE MONEY
24 FROM THE GENERAL FUND.

25 Q. DID YOU CONNECT THE DOTS THAT WAY?

26 A. I DID.

27 Q. SO YOUR TESTIMONY IS THAT YOU VOTED IN FAVOR OF
28 THIS KNOWING THAT IT WOULD HAVE REQUIRED DIPPING INTO THE

SUE HERFURTH, CSR #9645

1080

1 GENERAL FUND TO A LARGER EXTENT AT A TIME WHEN SERVICES WERE
2 BEING CUT BACK BECAUSE OF THE SHORTFALLS IN CITY REVENUES?

3 A. I DID, AND AGAIN, THE REASON WAS I FELT THERE WAS A
4 WORKFORCE THAT HAD TO MY KNOWLEDGE HAD BEEN, WAS WORKING
5 UNDER CONDITIONS WITH BENEFITS AND SALARY THAT THEY HAD
6 OTHER EXPECTATIONS.

7 MR. FINKELSTEIN: UNFORTUNATELY, IT'S 4:00 O'CLOCK
8 AND WE NORMALLY RECESS AT 4:00 O'CLOCK, THE STAFF HAS
9 REQUESTED THAT FOR OUR COURTROOM, SO I THINK WE'RE GOING TO
10 HAVE TO ASK YOU TO COME BACK TOMORROW AFTERNOON TO COMPLETE
11 YOUR TESTIMONY, AT 1:30.

12 THE WITNESS: CAN I CHECK MY CALENDAR? I ASSUME I
13 CAN ADJUST EVERYTHING TO BE HERE.

14 MR. FINKELSTEIN: WOULD YOU? WE DON'T HAVE A LOT
15 OF FLEXIBILITY, A LOT OF TIME; UNLESS IT'S SOMETHING VERY
16 IMPORTANT, IT CAN BE RESCHEDULED. I AM GOING TO HAVE YOU,
17 REQUIRE YOU TO BE BACK HERE AT 1:30, BUT LET US KNOW --

18 THE WITNESS: THERE'S A FLEXIBILITY BETWEEN
19 MORNING AND AFTERNOON?

20 MR. FINKELSTEIN: NO.

21 THE WITNESS: THEN I'LL MAKE IT WORK.
22 MR. FINKELSTEIN: THE FOREMAN IS GOING TO REMIND
23 YOU OF THE ADMONITION.
24 THE FOREPERSON: LET ME REMIND YOU OF THE
25 ADMONITION. IT APPLIES THROUGHOUT THE PROCEEDINGS.
26 THE WITNESS: IT DOES.
27 THE FOREPERSON: THANK YOU.
28 MR. FINKELSTEIN: THANK YOU VERY MUCH, AND SEE YOU

SUE HERFURTH, CSR #9645

1081

1 TOMORROW AT 1:30.
2 THE FOREPERSON: WE'LL ADJOURN AND RECONVENE
3 TOMORROW AFTERNOON AT 1:30.
4 (COURT WAS ADJOURNED FOR THE DAY.)
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SUE HERFURTH, CSR #9645

1082

1 SAN JOSE, CALIFORNIA APRIL 5, 2006

2

3

PROCEEDINGS:

4

(ROLL WAS TAKEN BY THE FOREPERSON.)

5

THE FOREMAN: THE GRAND JURORS ARE PRESENT WITH

6

THE EXCEPTION OF (NAME REDACTED).

7

THE FOREMAN: WE WOULD LIKE TO NOTE FOR THE RECORD

8

ANOTHER JUROR HAS INDICATED ACQUAINTANCE WITH MISS DANDO.

9

MR. (NAME REDACTED), WOULD YOU TELL US A BIT ABOUT

10

THE EXTENT OF YOUR ACQUAINTANCE?

11

A JUROR: I HAVE KNOWN HER FOR ABOUT 25, 30 YEARS,

12

WORKED WITH HER ON SEVERAL PROJECTS INCLUDING THE ARENA. SO

13

I KNOW HER THAT WAY, POLITICALLY.

14

THE FOREMAN: DO YOU FEEL THAT THIS WOULD IMPAIR

15

IN ANY WAY YOUR OBJECTIVITY --

16

A JUROR: NONE.

17 THE FOREMAN: -- IN CONSIDERING THE MATTERS OF
18 THIS CASE?

19 A JUROR: NO.

20 MR. FINKELSTEIN: SO YOU DON'T FEEL YOUR
21 RELATIONSHIP IS SUCH THAT YOU COULD NOT JUDGE THE TESTIMONY
22 OF FORMER COUNCILMEMBER DANDO THE SAME WAY YOU JUDGE ANYONE
23 ELSE'S TESTIMONY?

24 A JUROR: I REALLY BELIEVE I CAN BE OBJECTIVE.

25 THE FOREMAN: THANK YOU. WE'RE SATISFIED.

26 MR. FINKELSTEIN: NOW, THE WITNESS WILL BE RIGHT
27 BACK. SHE HAD TO MOVE HER CAR.

28 A JUROR, I THINK, HAS A QUESTION.

SUE HERFURTH, CSR #9645

1083

1 A JUROR: WELL, YES. I DON'T KNOW IF THIS IS
2 APPROPRIATE, BUT MY QUESTION I WROTE IS DID THE MAYOR'S
3 OFFICE, QUOTE UNQUOTE, VIOLATE FEDERAL LAW IN BECOMING
4 INVOLVED IN LABOR MATTERS.

5 MR. FINKELSTEIN: WELL, THAT IS SOMETHING THAT
6 WE'RE GOING TO HAVE TO, AT THE END OF THE CASE, THINK ABOUT,
7 BUT THE JURISDICTION OF THIS GRAND JURY IS TO LOOK INTO
8 VIOLATIONS OF STATE LAW.

9 SO IF THERE WAS A VIOLATION OF FEDERAL LAW, WE
10 WOULD NOT BE ASKING YOU TO TAKE FORMAL ACTION ABOUT THAT,
11 ALTHOUGH IT MIGHT HAVE SOME BEARING ON THE WRONGFULNESS OF
12 OTHER ACTIONS IN CONNECTION WITH STATE LAW. AND AT THE END
13 OF THE EVIDENCE WE'LL DISCUSS THAT WITH YOU, AND THAT'S A
14 PERFECTLY APPROPRIATE QUESTION TO ASK.

15 A JUROR: FINE.

16 MR. FINKELSTEIN: ANYTHING ELSE? LET ME CHECK ON
17 THE WITNESS AND WE' LL BE RIGHT BACK.

18 PAT DANDO,
19 HAVING BEEN PREVIOUSLY SWORN, TESTIFIED ON HER OATH AS
20 FOLLOWS:

21 EXAMINATION:

22 BY MR. FINKELSTEIN:

23 Q. AGAIN, MISS DANDO, THANKS FOR RETURNING.

24 YESTERDAY WHEN WE BROKE WE HAD BEEN LOOKING AT THE
25 MAYOR' S SEPTEMBER 16, 2004 MEMO TO THE CITY COUNCIL
26 REGARDING AMENDING THE NORCAL AGREEMENT. DO YOU RECALL
27 THAT?

28 A. I DO.

SUE HERFURTH, CSR #9645

1084

1 Q. I THINK YOU INDICATED THAT YOU CO-SIGNED THAT MEMO,
2 CORRECT?

3 A. THAT' S CORRECT.

4 Q. AND I THINK YOU RECOGNIZED THE MAYOR' S SIGNATURE
5 THERE, MR. GONZALES' S SIGNATURE THERE?

6 A. THAT' S CORRECT.

7 Q. ALSO COUNCILMEMBER CINDY CHAVEZ' S SIGNATURE,
8 CORRECT?

9 A. THAT' S CORRECT.

10 Q. I WANT TO CONTINUE ASKING YOU SOME MORE QUESTIONS
11 ABOUT WHAT YOU MAY HAVE KNOWN OR THOUGHT AT THE TIME YOU
12 SIGNED THIS MEMO, SO LET ME GET RIGHT INTO IT.

13 AT THE TIME YOU SIGNED THE MAYOR' S SEPTEMBER 16,
14 2004 MEMO, WAS IT YOUR BELIEF THAT THE WAGE AND BENEFIT
15 DEMANDS OF CWS WORKERS WERE NOT BEING ADDRESSED?

16 A. THAT' S CORRECT.

17 Q. WHY DID YOU THINK THAT THE WAGE AND BENEFIT DEMANDS
18 OF CWS WORKERS WERE NOT BEING ADDRESSED WHEN YOU SIGN THIS
19 MEMO?

20 A. I THINK I MAY HAVE MENTIONED THAT THERE WAS SOME
21 UNREST WITH LABOR ISSUES, AND I VISITED THE PLANT, THE
22 CALIFORNIA WASTE SOLUTIONS PLANT, AND AT THAT TIME HEARD
23 THAT WORKERS WERE NOT BEING PAID WHAT THEY HAD EXPECTED TO
24 BE PAID.

25 Q. AND CAN YOU TELL US THE APPROXIMATE DATE OF YOUR
26 VISIT TO THE PLANT?

27 A. IT WAS, I DON' T HAVE -- AN APPROXIMATE DATE WOULD
28 PROBABLY HAVE BEEN TWO OR THREE WEEKS, WITHIN THREE WEEKS

SUE HERFURTH, CSR #9645

1085

1 BEFORE THE MEETING.

2 Q. AND THESE COMPLAINTS, WHO TOLD YOU OF THESE
3 COMPLAINTS?

4 A. WE WERE GETTING COMPLAINTS FROM NEIGHBORS THAT WERE
5 SEEING WHAT THEY THOUGHT WAS THE GARBAGE BEING PICKED UP AND
6 RAW GARBAGE BEING PLACED INTO THE TRUCK WHERE RECYCLING WAS
7 SUPPOSED TO BE.

8 Q. RIGHT, BUT THAT WAS THE RESPONSIBILITY OF THE
9 NORCAL TEAMSTER DRIVERS, CORRECT?

10 A. IT WAS, EXCEPT THAT THIS CAUSED PROBLEMS WHEN IT

11 GOT TO THE RECYCLING PLANT.

12 Q. BECAUSE THERE WAS TOO MUCH GARBAGE MIXED IN WITH
13 RECYCLABLES?

14 A. THAT'S CORRECT.

15 Q. WHAT BEARING, IF ANY, DID THAT HAVE ON WAGE AND
16 BENEFIT DEMANDS OF THE CWS WORKERS?

17 A. NOTHING, UNTIL I WALKED THROUGH THE PLANT AND THEN
18 HEARD THAT THEY WERE NOT BEING PAID ACCORDING TO WHAT THEY
19 WERE SUPPOSED TO BE PAID.

20 Q. WHO DID YOU HEAR THAT FROM?

21 A. I BELIEVE, AND I'M NOT CERTAIN ON THIS, BUT I
22 BELIEVE IT WAS ONE OF THE PRINCIPALS OF THE PLANT.

23 Q. ONE OF THE PRINCIPALS OF CWS?

24 A. THAT'S CORRECT.

25 Q. SAID THAT THE WORKERS WEREN'T BEING PAID WHAT THEY
26 FELT THEY SHOULD BE PAID?

27 A. THAT'S CORRECT.

28 Q. THIS IS IN LATE 2004 WE'RE TALKING ABOUT?

SUE HERFURTH, CSR #9645

1086

1 A. RIGHT.

2 Q. YOU'RE SURE THIS IS NOT 2003, THE YEAR BEFORE?

3 A. UH -- I THOUGHT IT WAS JUST BEFORE WE HAD THIS
4 HEARING.

5 Q. OKAY. BY THIS HEARING, YOU MEAN THE SEPTEMBER 21
6 COUNCIL VOTE ON AMENDING THE NORCAL AGREEMENT?

7 A. THAT'S WHAT I BELIEVE. BUT AS I SAID YESTERDAY,
8 SIX YEARS IS A LONG TIME, AND IT COULD HAVE BEEN PRIOR TO

9 THAT.

10 Q. OKAY. DID ANYONE ACCOMPANY YOU ON THIS TRIP TO THE

11 CWS RECYCLE PLANT?

12 A. MY HUSBAND.

13 Q. ANYONE ELSE?

14 A. NO.

15 Q. WOULD THIS HAVE BEEN SOMETHING THAT WOULD HAVE BEEN

16 PUT ON YOUR COUNCIL CALENDAR?

17 A. MOST LIKELY. AS I RECALL, IT WAS ON A FRIDAY. I

18 MAY HAVE DONE IT JUST ON THE SPUR OF THE MOMENT. AND THE

19 REASON I KNOW IT WAS ON A FRIDAY IS BECAUSE MY HUSBAND IS

20 OFF ON FRIDAYS, THAT'S WHY HE WAS WITH ME, BUT MOST LIKELY

21 IT WAS ON THE CALENDAR.

22 Q. AND WHAT CAUSED YOU TO VISIT THE PLANT AT THAT

23 TIME?

24 A. BECAUSE I WAS GETTING COMPLAINTS FROM CONSTITUENTS

25 AS WELL AS JUST HEARING GENERAL COMPLAINTS THAT EITHER THERE

26 WAS A PROBLEM WITH THE DRIVERS PICKING UP THE WASTE OR THE

27 RECYCLING PLANT AND THEIR ABILITY TO PROVIDE THE SERVICE.

28 Q. NOW, IF THE PROBLEM WAS IN THE NORCAL DRIVERS

SUE HERFURTH, CSR #9645

1087

1 COMMINGLING GARBAGE AND RECYCLABLES, NO AMOUNT OF MONEY PAID

2 TO THE CWS WORKERS WOULD HAVE ANY BEARING ON THAT PROBLEM,

3 WOULD IT?

4 A. THAT'S CORRECT.

5 Q. PRIOR -- THIS SEPTEMBER 16, 2004 MEMO, DID YOU SIGN

6 IT ON SEPTEMBER 16?

- 7 A. I DON' T RECALL.
- 8 Q. WOULD IT HAVE BEEN ON OR ABOUT SEPTEMBER 16?
- 9 A. IT WOULD BE.
- 10 Q. AND PRIOR TO SIGNING THE MAYOR' S SEPTEMBER 16 MEMO,
11 DID JOE GUERRA DISCLOSE TO YOU THAT IN JULY OF 2003 THE
12 TEAMSTERS AND THE CWS WORKERS SIGNED A COLLECTIVE BARGAINING
13 AGREEMENT?
- 14 A. NO.
- 15 Q. PRIOR TO SIGNING THE MAYOR' S SEPTEMBER 16, 2004
16 MEMO, DID THE MAYOR DISCLOSE TO YOU THAT IN JULY OF 2003,
17 THE TEAMSTERS AND THE CWS MRF WORKERS SIGNED A COLLECTIVE
18 BARGAINING AGREEMENT?
- 19 A. NO.
- 20 Q. AT THE TIME YOU SIGNED THE MAYOR' S SEPTEMBER 16,
21 2004 MEMO, DID YOU KNOW THAT IN JULY 2003 THE TEAMSTERS AND
22 CWS MRF WORKERS SIGNED A COLLECTIVE BARGAINING AGREEMENT?
- 23 A. NO.
- 24 Q. I WILL SHOW YOU EXHIBIT 70. HAVE YOU EVER SEEN
25 THIS DOCUMENT BEFORE?
- 26 A. NO.
- 27 Q. LET' S START WITH THE, I' LL DIRECT YOUR ATTENTION TO
28 A PAGE IN THE DOCUMENT IN A MOMENT.

SUE HERFURTH, CSR #9645

1088

- 1 WHY DON' T YOU LOOK AT PAGE 21 FOR STARTERS.
2 THAT' S THE, CONTAINS THE PROVI SI ON IN PART THE
3 TERM OF THIS AGREEMENT?
- 4 A. YES.

5 Q. IS IT NOT THE CASE THAT THIS AGREEMENT, THE TERM OF
6 THIS AGREEMENT IS FROM JULY 1, 2002 THROUGH JUNE 30 OF 2007?

7 A. THAT'S CORRECT.

8 Q. AND THE SIGNATURE DATE OF THE AGREEMENT IS, IT'S
9 HARD TO SEE, MAYBE YOUR COPY IS BETTER, BUT IT LOOKS LIKE
10 JULY 10, 2003, DOES IT NOT?

11 A. THAT'S CORRECT.

12 Q. SO IT WOULD HAVE BEEN MORE THAN A YEAR BEFORE YOU
13 WERE ASKED TO SIGN THIS SEPTEMBER 16, 2004 MEMO?

14 A. THAT'S CORRECT.

15 Q. AND IN YOUR EXPERIENCE, WHEN A UNION AND A
16 MANAGEMENT HAVE ENTERED INTO A COLLECTIVE BARGAINING
17 AGREEMENT, DOES THAT USUALLY RESOLVE FOR THE TERM OF THE
18 AGREEMENT THE MAJOR ISSUE ISSUES BETWEEN THE UNION AND
19 MANAGEMENT?

20 A. I ASSUME IT DOES, BUT I'M NOT THAT VERSED IN
21 NEGOTIATIONS OR AGREEMENTS WITH UNIONS.

22 Q. LOOKING AT THIS AGREEMENT NOW, DOES THAT CAUSE YOU
23 TO RETHINK WHEN IT WAS YOU WENT OUT TO CWS AND MAY HAVE
24 HEARD ANYTHING ABOUT WORKERS NOT BEING PAID WHAT THEY WERE
25 SUPPOSED TO BE PAID?

26 A. IT'S POSSIBLE, BUT AGAIN, IT SEEMS TO ME LIKE IT
27 WAS CLOSER TO THE DATE OF '04, BUT IT COULD VERY WELL BE.

28 Q. WELL -- OKAY. IF YOU HAD KNOWN AT THE TIME YOU

SUE HERFURTH, CSR #9645

1089

1 WERE ASKED TO SIGN THE MAYOR'S SEPTEMBER 16, 2004 MEMO THAT
2 THERE WAS ALREADY IN PLACE A COLLECTIVE BARGAINING AGREEMENT

3 BETWEEN THE TEAMSTERS AND THE CWS WORKERS IN SAN JOSE AND IT
4 HAD BEEN ENTERED INTO A YEAR EARLIER, IN JULY OF 2003, IS
5 THAT SOMETHING THAT MIGHT HAVE AFFECTED YOUR DECISION TO
6 SIGN ON TO THE MEMO AND SUPPORT THIS AMENDMENT?

7 A. IT MAY HAVE.

8 Q. DID YOU UNDERSTAND THAT WHEN YOU WERE BEING ASKED
9 TO SIGN THIS MEMO ON SEPTEMBER 16, 2004, THAT THE WORKERS
10 HAD BEEN PAID FOR SOME TIME AND WHAT WAS AT ISSUE WAS
11 REIMBURSING NORCAL FOR THE PAYMENTS THAT HAD ALREADY BEEN
12 MADE AND FOR FUTURE PAYMENTS, DID YOU UNDERSTAND THAT
13 DISTINCTION?

14 A. NO.

15 Q. YOU DID NOT?

16 A. I DID NOT.

17 Q. SO YOU THOUGHT YOUR SUPPORT OF THIS AMENDMENT WOULD
18 HELP THE WORKERS GET PAID?

19 A. THAT'S CORRECT.

20 Q. YOU DID NOT, DID NOT UNDERSTAND IT WOULD ACTUALLY
21 HELP NORCAL GETTING PAID WHAT THE WORKERS HAD ALREADY BEEN
22 PAID?

23 A. I DID NOT UNDERSTAND THAT.

24 Q. IF YOU HAD KNOWN THAT, WOULD THAT HAVE CHANGED YOUR
25 DECISION TO SUPPORT THAT AMENDMENT?

26 A. IT WOULD HAVE.

27 Q. DID MR. GUERRA IN YOUR CONVERSATION EXPLAIN THAT TO
28 YOU?

- 1 A. I DON'T RECALL IT IF HE DID.
- 2 Q. OKAY. NOW, IN LOOKING AT EXHIBIT 42, THE SEPTEMBER
- 3 16 MEMO, BOTTOM OF PAGE TWO, THERE IS A LINE THAT TALKS
- 4 ABOUT SOMETHING BEING OUTLINED IN AN ATTACHED MEMORANDUM.
- 5 DO YOU SEE THAT?
- 6 A. I DO.
- 7 Q. AND DO YOU RECALL WHEN, WHETHER OR NOT WHEN YOU
- 8 WERE ASKED -- BY THE WAY, DO YOU RECALL WHO ASKED YOU TO
- 9 SIGN THIS MEMORANDUM?
- 10 A. MY BEST RECOLLECTION IT WAS JOE GUERRA.
- 11 Q. OKAY. AND WAS THIS OVER AT THE OLD CITY HALL?
- 12 A. THAT'S CORRECT.
- 13 Q. DO YOU REMEMBER WHERE?
- 14 A. MOST LIKELY IN MY OFFICE.
- 15 Q. OKAY. AT THE TIME YOU WERE ASKED TO SIGN THE
- 16 MEMORANDUM, WAS THERE AN ATTACHED MEMORANDUM FROM THE
- 17 ADMINISTRATION STAFF?
- 18 A. I DON'T BELIEVE THERE WAS.
- 19 Q. OKAY.
- 20 MR. FINKELSTEIN: I WILL HAVE MARKED AS EXHIBIT 91
- 21 A CERTIFIED COPY OF A SEPTEMBER 16, 2004 MEMO FROM DEPUTY
- 22 CITY MANAGER JAMES HOLGERSON TO THE MAYOR AND CITY
- 23 COUNCILMEN.
- 24 BY MR. FINKELSTEIN:
- 25 Q. I TAKE IT YOU DID ATTEND THE SEPTEMBER 21, 2004
- 26 CITY COUNCIL VOTE TO AMEND THE NORCAL AGREEMENT, CORRECT?
- 27 A. I DID.
- 28 Q. AND DID YOU VOTE IN FAVOR OF AMENDING THE NORCAL

1 AGREEMENT?

2 A. I DID.

3 Q. AND DID A MAJORITY OF THE CITY COUNCIL VOTE IN
4 FAVOR OF AMENDING THE AGREEMENT?

5 A. THEY DID.

6 MR. FINKELSTEIN: I WILL ALSO ASK TO HAVE MARKED
7 AS EXHIBIT 92 A CERTIFIED COPY OF THE MINUTES OF THE
8 SAN JOSE CITY COUNCIL FOR TUESDAY, SEPTEMBER 21, 2004.

9 THE FOREPERSON: SO MARKED.

10 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
11 JURY EXHIBIT 92.)

12 BY MR. FINKELSTEIN:

13 Q. WHY DON'T WE TAKE A LOOK AT THE HOLGERSON MEMO FOR
14 A MOMENT. DID YOU HAVE, DID YOU RECEIVE A COPY OF THAT
15 PRIOR TO VOTING, CASTING YOUR VOTE ON SEPTEMBER 21, 2004?

16 A. YOU KNOW, I'M SURE I PROBABLY DID, BUT SIX
17 YEARS -- I ASSUME THAT I DID.

18 Q. DO YOU HAVE ANY REASON TO BELIEVE YOU DID NOT?

19 A. NO, OTHER THAN THAT THERE IS A AWFUL LOT OF PAPER
20 THAT GETS DISTRIBUTED AROUND CITY HALL AND IT'S POSSIBLE
21 THAT I DIDN'T GET ALL OF IT, BUT I ASSUME I DID GET THIS, I
22 JUST DON'T REMEMBER IT SPECIFICALLY.

23 Q. LET ME DIRECT YOUR ATTENTION TO A LINE IN THE MEMO
24 IF I CAN FIND IT HERE.

25 IF YOU LOOK AT PAGE THREE, AND NEAR THE BOTTOM OF
26 THE PAGE THERE'S A PARAGRAPH THAT READS:

27 IN EARLY 2003, CWS ENTERED INTO A COLLECTIVE
28 BARGAINING AGREEMENT WITH THE TEAMSTERS FOR

1 SORTERS AND EQUIPMENT OPERATORS AT THE TIMOTHY
2 DRIVE FACILITY. THE AGREEMENT IS RETROACTIVE TO
3 JULY 1, 2002.

4 DO YOU SEE THAT STATEMENT?

5 A. I DO.

6 Q. SO HAD YOU READ THAT MEMO PRIOR TO CASTING YOUR
7 VOTE, YOU WOULD HAVE NO DOUBT REALIZED THAT THE COLLECTIVE
8 BARGAINING AGREEMENT PROVIDING FOR THE PROPER WAGES OR
9 AGREED UPON WAGES HAD BEEN IN PLACE MORE THAN A YEAR PRIOR
10 TO THIS AGREEMENT, CORRECT?

11 A. CORRECT.

12 Q. AND THEN IF YOU'LL NOTE FURTHER IN THE MEMO,
13 NORCAL'S REQUESTING THE FOLLOWING SCHEDULE OF PAYMENTS. DO
14 YOU SEE THAT?

15 A. I DO.

16 Q. AND YOU SEE THAT THE PAYMENTS START WITH A
17 RETROACTIVE PAYMENT FROM JULY 1, '02 TO JULY 1, '03 OF \$1.9
18 MILLION, RIGHT?

19 A. THAT'S CORRECT.

20 Q. AND DID YOU UNDERSTAND THAT WHEN YOU CAST YOUR
21 VOTE?

22 A. I ASSUME I DID.

23 Q. OKAY. SO IF THAT'S TRUE, THAT YOU UNDERSTOOD THAT
24 THEY WERE, THESE WERE RETROACTIVE PAYMENTS, AND THAT THE
25 PAYMENTS IN TURN WERE FOR EXTRA LABOR COSTS, THEN HOW IS IT
26 THAT YOU COULD HAVE THOUGHT THAT YOUR VOTE WAS GOING TO
27 RESULT IN ADDITIONAL WAGE BENEFITS TO WORKERS?

28 A. UH -- MAYBE THAT WAS A MISCONCEPTION ON MY PART.

SUE HERFURTH, CSR #9645

1093

1 BUT I DID THAT THINK THAT, THROUGH ADDITIONAL FUNDS, THAT
2 THEY WOULD BE PASSED TO CALIFORNIA WASTE SOLUTIONS.

3 Q. SO YOUR TESTIMONY IS YOU DID NOT APPRECIATE AT THE
4 TIME YOU CAST YOUR VOTE THAT THE WORKERS HAD BEEN PAID FOR
5 SOME TIME PRIOR TO THAT COUNCIL MEETING IN LATE '04; IS THAT
6 CORRECT?

7 A. NO. IT WAS MY UNDERSTANDING THAT THEY WOULD BE
8 PAID THE WAGES, BUT THAT THEY WERE LOOKING TO THE CITY TO
9 REIMBURSE THOSE WAGES.

10 Q. SO YOUR VOTE WAS NOT GOING TO AFFECT THE WORKERS,
11 IT WAS GOING TO AFFECT NORCAL AND ITS FUNDS, FAIR?

12 A. THAT'S FAIR.

13 Q. AND YOU UNDERSTOOD THAT?

14 A. I BELIEVE I DID.

15 Q. YOU UNDERSTOOD, THEN, THAT THE VOTE WAS TO
16 REIMBURSE NORCAL FOR THE ADDITIONAL LABOR COSTS THAT HAD
17 ALREADY BEEN INCURRED AND PAID BY NORCAL, AND IN TURN CWS.

18 A. YES.

19 Q. AND YOU UNDERSTOOD THAT THE ORIGINAL AGREEMENT WITH
20 NORCAL THAT WE LOOKED AT YESTERDAY PROVIDED FOR NO
21 ADJUSTMENT IN COMPENSATION TO NORCAL FOR ANY ADDITIONAL
22 LABOR COSTS?

23 A. WOULD YOU SAY THAT AGAIN?

24 Q. YOU UNDERSTOOD AS WELL THAT THE ORIGINAL AGREEMENT
25 THAT THE CITY ENTERED INTO WITH NORCAL PROVIDED THAT THERE

26 WOULD BE NO COMPENSATION ADJUSTMENT DUE TO ADDITIONAL LABOR
27 COSTS?

28 A. THAT'S CORRECT.

SUE HERFURTH, CSR #9645

1094

1 Q. SO WHAT WAS THE REASON THEN FOR SUPPORTING THIS
2 AMENDMENT?

3 A. RIGHTLY OR WRONGLY, I FELT --

4 Q. WE'RE NOT MAKING A JUDGMENT.

5 A. I KNOW. I'M SAYING, RIGHTLY OR WRONGLY, IN MY
6 THINKING IT WAS GOING TO BENEFIT THE CALIFORNIA WASTE
7 SOLUTIONS EMPLOYEES.

8 Q. AND HOW WOULD THAT WORK, CAN YOU EXPLAIN THAT TO
9 US?

10 A. NO.

11 Q. WELL, THAT'S AN ANSWER. OKAY. LET ME ASK YOU
12 ANOTHER QUESTION ABOUT THIS VOTE ON SEPTEMBER 21.

13 AT THE TIME YOU VOTED ON THE AMENDMENT TO THE
14 NORCAL AGREEMENT, DID YOU HAVE ANY REASON TO SUSPECT THAT
15 PROMISES HAD BEEN MADE TO NORCAL IN A SECRET SIDE DEAL?

16 A. NO.

17 Q. YOU DID NOT?

18 A. I DID NOT.

19 MR. FINKELSTEIN: I WILL ASK TO HAVE MARKED AS
20 EXHIBIT 93 A CERTIFIED COPY OF A SEPTEMBER 20, 2004 MEMO TO
21 THE MAYOR AND CITY COUNCIL FROM LINDA LEZOTTE AND CHUCK
22 REED.

23 THE FOREPERSON: SO MARKED.

24 VoI 7Go~1
(AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
25 JURY EXHIBIT 93.)
26 BY MR. FINKELSTEIN:

27 Q. COULD YOU LOOK AT 93 AND TELL US WHETHER OR NOT
28 THAT WAS MADE AVAILABLE TO YOU PRIOR TO YOU CASTING YOUR

SUE HERFURTH, CSR #9645

1095

1 VOTE ON SEPTEMBER 21, 2004?

2 A. I BELIEVE IT WAS.

3 Q. OKAY. LET ME DIRECT YOUR ATTENTION TO PARAGRAPH
4 TWO OF THIS MEMO. BY THE WAY, LINDA LEZOTTE AND CHUCK REED
5 WERE ALSO COUNCILMEMBERS AT THE TIME OF THE MEMO?

6 A. THAT'S CORRECT.

7 Q. LOOK AT PARAGRAPH TWO -- FIRST OF ALL, THESE
8 COUNCILMEMBERS ARE RECOMMENDING AGAINST THE AMENDMENT,
9 CORRECT?

10 A. THAT'S CORRECT.

11 Q. DID THEY ALSO VOTE AGAINST IT, IF YOU RECALL?

12 A. I BELIEVE THEY DID.

13 Q. LOOK AT PARAGRAPH TWO, A REFERENCE TO ANY PROMISES
14 OR REPRESENTATIONS THAT MAY HAVE BEEN MADE TO NORCAL NOT
15 BEING DISCLOSED TO THE COUNCIL WHEN NORCAL WAS APPROVED AS
16 THE PREFERRED VENDOR. DO YOU SEE THAT?

17 A. I DO.

18 Q. IT SAYS, "NOR WERE THEY DISCLOSED TO THE COUNCIL
19 BEFORE THE CONTRACT WITH NORCAL WAS APPROVED," WHICH WOULD
20 HAVE BEEN IN MARCH OF '01, CORRECT?

21 A. THAT'S CORRECT.

22 Q. IN PARAGRAPH FOUR IT TALKS ABOUT ALLOWING A SIDE
23 DEAL TO ALTER THE TERMS OF THE AGREEMENT NOT BEING FAIR TO
24 OTHER COMPANIES. DO YOU SEE THAT?

25 A. YES.

26 Q. WOULDN'T THIS MEMO HAVE BEEN REASON TO SUSPECT AT
27 THE TIME OF THE VOTE THAT PROMISES HAD BEEN MADE TO NORCAL
28 IN A SECRET SIDE DEAL?

SUE HERFURTH, CSR #9645

1096

1 A. IT WOULD HAVE BEEN.

2 Q. AND DID YOU NOT MAKE THE CONNECTION AT THAT TIME,
3 OR WHAT IS YOUR REASON FOR ANSWERING THAT YOU HAD NO REASON
4 TO SUSPECT?

5 A. I DIDN'T KNOW OF ANY SIDE DEALS OR ANY AGREEMENTS
6 THAT HAD BEEN MADE PRIOR TO DISCUSSING THIS.

7 Q. I UNDERSTAND THAT, BUT MY QUESTION WAS WHETHER, AT
8 THE TIME YOU CAST YOUR VOTE ON SEPTEMBER 21, 2004, YOU HAD
9 ANY REASON TO SUSPECT THAT THERE MAY HAVE BEEN A PROMISE
10 MADE IN A SECRET SIDE DEAL.

11 A. BY READING THIS MEMO, I WOULD KNOW THAT SOMEONE
12 SUSPECTED THAT AND IT WAS BEING BROUGHT TO LIGHT AND
13 DISCUSSED

14 Q. LET ME ASK YOU THIS FIRST: IS IT TRUE THAT, AS THE
15 MEMO SUGGESTS, ANY PROMISES OR REPRESENTATIONS THAT MAY HAVE
16 BEEN MADE TO NORCAL WERE NOT DISCLOSED AT THE COUNCIL WHEN
17 NORCAL WAS APPROVED PREFERRED VENDOR?

18 A. THAT'S CORRECT.

19 Q. AND IS IT TRUE THAT ANY PROMISES OR REPRESENTATIONS

20 THAT MAY HAVE BEEN MADE TO NORCAL WERE NOT DISCLOSED TO THE
21 COUNCIL BEFORE THE CONTRACT WAS SIGNED AND APPROVED?

22 A. THAT'S CORRECT.

23 Q. DID YOU INQUIRE AT THE COUNCIL MEETING BEFORE
24 CASTING YOUR VOTE ABOUT WHETHER OR NOT ANY PROMISES OR
25 REPRESENTATIONS HAD BEEN MADE TO NORCAL BEFORE NORCAL WAS
26 APPROVED AS THE PREFERRED VENDOR, BEFORE THE CONTRACT WAS
27 SIGNED?

28 A. I WOULD HAVE TO GO BACK AND LISTEN TO THE TAPE, I

SUE HERFURTH, CSR #9645

1097

1 DON'T RECALL THAT.

2 Q. WOULD THERE BE -- LET'S CALL IT AN ALLEGATION --
3 IN THIS MEMO, IS THIS SOMETHING YOU WOULD HAVE CONSIDERED
4 IMPORTANT TO KNOW BEFORE CASTING YOUR VOTE AND APPROVING A
5 PAYMENT OF SOME \$11 MILLION TO NORCAL?

6 A. IT WOULD BE, AND I BELIEVE THERE WAS DISCUSSION AT
7 THAT COUNCIL MEETING ABOUT THIS, BUT I DON'T RECALL THAT I
8 ASKED THE QUESTIONS OR WHO ASKED THE QUESTIONS.

9 Q. OKAY. JUST A MINUTE.

10 DO YOU RECALL THIS ISSUE BEING DISCUSSED AT THE
11 SEPTEMBER 21 COUNCIL MEETING?

12 A. I BELIEVE I DO, BUT IT'S BEEN DISCUSSED SO MUCH IN
13 THE LAST FEW YEARS THAT I COULDN'T SAY FOR SURE UNLESS I
14 HEARD THE TAPES.

15 Q. OKAY. WELL -- OKAY. THAT'S FAIR, AND TO BE FAIR
16 TO YOU I THINK MAYBE WE SHOULD PLAY SOME OF THE TAPE FOR
17 YOU. IT WILL BE A MOMENT WHILE IT'S SET UP.

18 WE HAVE A CERTIFIED COPY OF THE VIDEO WITH CLOSED
19 CAPTIONING FOR THE SEPTEMBER 21 COUNCIL MEETING REGARDING
20 THIS ITEM. SO, FOR THE RECORD, WE ARE GOING TO PLAY THAT.
21 BECAUSE IT HAS CLOSED CAPTIONING TEXT, WE'RE NOT GOING TO
22 ASK THE REPORTER TO TRY TO TAKE DOWN SIMULTANEOUSLY WHAT'S
23 SAID ON THE VIDEO.

24 THIS IS THE SEPTEMBER 21, 2004 CITY COUNCIL
25 MEETING ITEM 7.3, EXHIBIT 94.

26 THE FOREPERSON: SO MARKED.

27 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
28 JURY EXHIBIT 94.)

SUE HERFURTH, CSR #9645

1098

1 MR. FINKELSTEIN: JUST A MINUTE WHILE I GET IT
2 STARTED.

3 (PLAYING VIDEO.)

4 MR. FINKELSTEIN: LET ME STOP THE VIDEO FOR A
5 MOMENT.

6 BY THE WAY, LADIES AND GENTLEMEN, THIS EVIDENCE IS
7 NOT BEING OFFERED FOR THE TRUTH. THAT IS WHAT WE CALL
8 HEARSAY. THIS IS SAID BY SOMEONE NOT UNDER OATH, NOT INSIDE
9 OF THE GRAND JURY ROOM. IT'S BEING OFFERED SIMPLY TO TELL
10 YOU WHAT PEOPLE SAID, AND YOU CAN'T CONSIDER THIS AS
11 EVIDENCE OF ANYTHING THAT'S SAID BEING TRUE. THIS IS SIMPLY
12 WHAT THEY SAID ABOUT THINGS WHICH MAY OR MAY NOT BE TRUE
13 BASED ON EVIDENCE.

14 Q. MISS DANDO, THE MAYOR SUGGESTS IN THE STATEMENT AT
15 THE BEGINNING OF THIS COUNCIL SESSION ON THE ISSUE THAT IF

16 THE MAYOR IN FACT HADN' T ACTED, THERE WOULD HAVE BEEN A
17 STRIKE IN JULY 2002 WITH GARBAGE ON THE STREETS. AS FAR AS
18 YOU KNOW, IS THAT TRUE?

19 A. I DON' T KNOW IT TO BE TRUE.

20 Q. WELL, LET ME PUT IT TO YOU THIS WAY. THE ISSUE
21 THAT WE' RE TALKING ABOUT IS THE UNION AND THE WORKERS FOR
22 CWS AT THE RECYCLING FACILITY, CORRECT?

23 A. THAT' S CORRECT.

24 Q. WE NEVER WERE TALKING ABOUT THE TEAMSTERS, DRIVERS
25 EMPLOYED FOR NORCAL, RIGHT?

26 A. THAT' S CORRECT.

27 Q. AND IS IT NOT THE CASE THAT ON JULY 1, 2002, THE
28 CWS FACILITY IN SAN JOSE WAS NOT OPERATIONAL?

SUE HERFURTH, CSR #9645

1099

1 A. THAT' S CORRECT.

2 Q. WAS THERE GARBAGE ON THE STREETS?

3 A. NO.

4 Q. WHAT NORCAL DID WAS GIVE IT TO ANOTHER FACILITY FOR
5 RECYCLING?

6 A. THAT' S CORRECT.

7 Q. SO BASED ON THAT, DOES IT APPEAR TO YOU THAT THE
8 MAYOR' S STATEMENT, IF HE HADN' T INTERVENED THERE WOULD HAVE
9 BEEN GARBAGE ON THE STREETS ON JULY 1, 2002, WAS ACCURATE?

10 A. FROM WHAT HE SAYS IS WHAT I WOULD BELIEVE.

11 Q. THAT IT WAS ACCURATE?

12 A. THAT IT WAS NOT ACCURATE, BECAUSE THERE WAS NOT
13 GARBAGE ON THE STREET.

14 Q. BUT --

15 A. BUT IF I WERE TO LISTEN TO WHAT HE SAID, PERHAPS HE
16 PREVENTED THAT.

17 Q. WELL, BUT SINCE WHAT'S AT PLAY HERE IS THE CWS
18 WORKERS AT THE RECYCLING FACILITY, WHETHER THE PLANT IS
19 OPERATIONAL OR BEING STRUCK, WE KNOW FROM PAST EXPERIENCE IT
20 DIDN'T RESULT IN GARBAGE ON THE STREETS, DID IT?

21 A. IT DID NOT.

22 Q. I MEAN, HOW COULD A STRIKE AT THE CWS PLANT BE ANY
23 WORSE THAN THE PLANT NOT BEING OPEN FOR BUSINESS? IT
24 COULDN'T, COULD IT?

25 A. NO, IT COULDN'T.

26 Q. NOW, IN LISTENING TO THE MAYOR, DID THE MAYOR
27 INDICATE THAT IF HE HADN'T STEPPED IN THERE MIGHT HAVE BEEN
28 A STRIKE ON JULY 1, 2002, THE OPENING DAY FOR THE TRANSITION

SUE HERFURTH, CSR #9645

1100

1 TO THE NEW VENDORS?

2 A. THAT'S WHAT HE SAID, YES.

3 Q. WOULDN'T THAT SUGGEST TO SOMEBODY HEARING THAT, THE
4 MAYOR MUST HAVE DONE SOMETHING, ACCORDING TO THE STATEMENT,
5 BEFORE JULY 1 OF '02?

6 A. IT WOULD.

7 Q. WHAT DID THE MAYOR DO?

8 A. I DON'T KNOW.

9 Q. DID YOU ASK?

10 A. NO.

11 Q. DID ANYONE ASK?

12 A. NOT THAT I RECALL.

13 (PLAYING VIDEO.)

14 BY MR. FINKELSTEIN:

15 Q. WE JUST HEARD THE MAYOR SAY THERE HAD BEEN A
16 ONE-DAY STRIKE WITH SIGNIFICANT SERVICE INTERRUPTION. DID
17 YOU HEAR THAT?

18 A. I DID.

19 Q. IS THAT TRUE?

20 A. THE -- AS I MENTIONED EARLIER, THERE WAS DISSENSION
21 WITHIN, AMONGST THE UNION MEMBERS. AND I KNEW THAT THERE
22 WERE SOME PROBLEMS ON PICKING UP THE GARBAGE, NOT THAT IT
23 WAS ON THE STREET, BUT JUST IN THE COLLECTION ITSELF, AND
24 THAT THERE WAS UNREST WITH THE DRIVERS AND ALSO CALIFORNIA
25 WASTE SOLUTIONS EMPLOYEES.

26 Q. BUT WHY WAS THERE UNREST WITH THE DRIVERS? THE
27 DRIVERS WORKING FOR NORCAL WERE UNDER AN EXISTING COLLECTIVE
28 BARGAINING AGREEMENT WITH NORCAL, WEREN'T THEY?

SUE HERFURTH, CSR #9645

1101

1 A. THEY WERE, AND I DON'T KNOW WHY THERE WAS, BUT I
2 MENTIONED TO YOU A COUPLE OF TIMES THE REPORTS I WAS GETTING
3 IN FROM MY CONSTITUENTS WERE EITHER THAT THEY WERE,
4 DELIBERATELY OR THROUGH INCOMPETENCE, MIXING GARBAGE, AND WE
5 HAD SOME COMMUNITY MEMBERS THAT WERE CONCERNED ABOUT THAT.

6 Q. I UNDERSTAND, BUT I'M ALSO TRYING TO UNDERSTAND HOW
7 PAYING \$11 MILLION SO THAT CWS'S WORKERS CAN GET MORE MONEY
8 AND BE REPRESENTED BY TEAMSTERS INSTEAD OF LONGSHOREMEN, HOW
9 THAT COULD HAVE ANY EFFECT ON THE DRIVERS WHO WORKED FOR A

10 DIFFERENT COMPANY, NORCAL. CAN YOU TELL US HOW THAT MIGHT
11 BE?

12 A. NO.

13 Q. OKAY.

14 (PLAYING VIDEO.)

15 BY MR. FINKELSTEIN:

16 Q. IS MR. MORALES -- YOU JUST HEARD MR. MORALES SAY
17 THAT MOST OF THE CITY COUNCIL AND THEIR STAFF WERE KEPT WELL
18 INFORMED ABOUT THE PROCESS THAT RESULTED IN THE COLLECTIVE
19 BARGAINING AGREEMENT BEING SIGNED. IS THAT TRUE AS TO
20 YOURSELF?

21 A. NO.

22 Q. MR. MORALES NEVER INFORMED YOU OF THIS PROCESS?

23 A. NO.

24 Q. OR YOUR STAFF, TO YOUR KNOWLEDGE?

25 A. NOT TO MY KNOWLEDGE.

26 (PLAYING VIDEO.)

27 BY MR. FINKELSTEIN:

28 Q. WE JUST HEARD COUNCILMEMBER WILLIAMS TALKING TO

SUE HERFURTH, CSR #9645

1102

1 DEPUTY CITY MANAGER HOLGERSON ABOUT THE RATES CHANGING. DID
2 YOU HEAR THAT?

3 A. I DID.

4 Q. AND THE RATES DON'T CHANGE BECAUSE THE GENERAL FUND
5 IS MAKING UP THE SHORTFALL, CORRECT?

6 A. THAT'S CORRECT.

7 (PLAYING VIDEO.)

8 BY MR. FINKELSTEIN:

9 Q. WE HEARD COUNCILMEMBER WILLIAMS MAKE A COMMENT
10 ABOUT THE PEOPLE ON THE LINE DESERVE THE INCREASE, CORRECT?

11 A. THAT'S CORRECT.

12 Q. IS IT NOT THE CASE, AS WE DISCUSSED, THE INCREASE
13 WAS ALREADY IN PLACE PURSUANT TO THE COLLECTIVE BARGAINING
14 AGREEMENT? IT'S NOT THE PEOPLE ON THE LINE GETTING THE \$11
15 MILLION, IT'S NORCAL GETTING THE \$11 MILLION, CORRECT?

16 A. IT APPEARS THAT WAY, YES. AT THE TIME -- WELL,
17 YES.

18 Q. THAT WAS YOUR UNDERSTANDING AT THE TIME?

19 A. AT THE TIME, MY UNDERSTANDING WAS WHAT WE WERE
20 DOING WAS APPROVING ADDITIONAL MONEY THAT WOULD KEEP THE
21 CALIFORNIA WASTE SOLUTIONS EMPLOYERS WHOLE.

22 Q. THE EMPLOYERS?

23 A. I'M SORRY, THE EMPLOYEES.

24 Q. THE WORKERS?

25 A. THE WORKERS.

26 Q. THE WORKERS WHOLE?

27 A. RIGHT.

28 Q. I WILL STOP THE VIDEO FOR A SECOND AND SHOW YOU

SUE HERFURTH, CSR #9645

1103

1 ANOTHER EXHIBIT. LET ME HAVE YOU TAKE A LOOK AT EXHIBIT 15.

2 NOW, WE HAVE BEEN REFERRING TO THIS EXHIBIT AS THE
3 OCTOBER 9, 2000 ADDENDUM BETWEEN NORCAL AND CWS. AND JUST
4 TO REORIENT YOU, NORCAL WAS THE BUSINESS THAT HAD THE
5 CONTRACT WITH THE CITY, CORRECT?

- 6 A. THAT' S CORRECT.
- 7 Q. AND CWS WAS A SUBCONTRACTOR OF NORCAL, CORRECT?
- 8 A. THAT' S RIGHT.
- 9 Q. NOW, IF YOU TAKE A MOMENT AND LOOK AT THIS
- 10 DOCUMENT, IT' S ABOUT A HALF A PAGE, IS IT NOT THE CASE THAT
- 11 THIS DOCUMENT PROVIDES THAT NORCAL IS GOING TO MAKE CWS
- 12 WHOLE FOR THE EXTRA WAGE AND BENEFIT COSTS?
- 13 A. FROM THE SECOND PARAGRAPH, IT LOOKS LIKE THAT.
- 14 Q. YEAH. AND THE DATE OF THIS DOCUMENT IS OCTOBER 9,
- 15 2000, RIGHT?
- 16 A. RIGHT.
- 17 Q. SO IN TERMS OF MAKING CWS WHOLE, THEY WERE ALREADY
- 18 MADE WHOLE AS OF OCTOBER 9, 2000 FOR THE EXTRA LABOR COSTS;
- 19 IS THAT CORRECT?
- 20 A. IT LOOKS AS THOUGH THAT' S THE CASE.
- 21 Q. DID YOU KNOW THAT?
- 22 A. NO.
- 23 Q. IS THAT SOMETHING THAT WOULD HAVE BEEN IMPORTANT
- 24 FOR YOU TO KNOW BEFORE YOU CAST YOUR VOTE?
- 25 A. IT WOULD HAVE BEEN.
- 26 Q. IS THAT SOMETHING THAT MIGHT HAVE AFFECTED HOW YOU
- 27 VOTED?
- 28 A. IT WOULD HAVE.

SUE HERFURTH, CSR #9645

1104

- 1 Q. NOW, IN THE FIRST PARAGRAPH THERE' S A STATEMENT
- 2 THAT READS AS FOLLOWS:
- 3 THE PARTIES HAVE LEARNED THAT THE CITY OF

4 SAN JOSE MAY REQUIRE CALIFORNIA WASTE SOLUTIONS,
5 INC., CWS, AND NORCAL WASTE SYSTEMS, INC., NORCAL,
6 TO PROVIDE WAGE AND BENEFIT PACKAGES THAT ARE
7 DIFFERENT FROM CWS'S CURRENT WAGE AND BENEFIT
8 PACKAGE.

9 DO YOU SEE THAT SENTENCE?

10 A. YES.

11 Q. ON OCTOBER 9, 2000, IT WOULD HAVE BEEN THE MONDAY
12 BEFORE THE FIRST COUNCIL VOTE ON THE ORIGINAL NORCAL
13 AGREEMENT, CORRECT?

14 A. THAT'S CORRECT.

15 Q. TO YOUR KNOWLEDGE, DID THE CITY REQUIRE ANY
16 DIFFERENT WAGE AND BENEFIT PAYMENTS?

17 A. NOT TO MY KNOWLEDGE.

18 Q. DO YOU KNOW WHAT THIS PARAGRAPH REFERS TO?

19 A. NO.

20 MR. FINKELSTEIN: WHY DON'T WE -- I WOULD LIKE TO
21 GO A LITTLE FURTHER BEFORE WE TAKE OUR BREAK. I'M NOT
22 SEEING ANY REQUESTS FOR A BREAK, SO LET'S GO FORWARD.

23 (PLAYING VIDEO.)

24 BY MR. FINKELSTEIN:

25 Q. SO WE JUST HEARD CITY ATTORNEY RICK DOYLE RESPOND
26 TO INQUIRIES FROM COUNCILMEMBER REED ABOUT AMENDING THE
27 AGREEMENT, PAYING NORCAL AN ADDITIONAL \$11 MILLION WITH
28 PUBLIC FUNDS?

SUE HERFURTH, CSR #9645

1105

1 A. THAT'S CORRECT.

2 Q. CITY ATTORNEY DOYLE SUGGESTS THAT THERE WAS
3 ADDITIONAL CONSIDERATION TO JUSTIFY THIS \$11 MILLION
4 PAYMENT, CORRECT?

5 A. THAT'S CORRECT.

6 Q. THAT ADDITIONAL CONSIDERATION WAS THE GARBAGE STUDY
7 AND ADDITIONAL 10 NEIGHBORHOOD CLEANUP BINS AND E-WASTE
8 SCRAP PROGRAM?

9 A. THAT'S CORRECT.

10 Q. IS IT NOT THE CASE THAT THE VALUE OF THAT
11 ADDITIONAL CONSIDERATION WAS SEVERAL HUNDRED THOUSAND
12 DOLLARS AT MOST?

13 A. I BELIEVE THAT'S CORRECT.

14 Q. WHEREAS THE ADDITIONAL PAYMENT TO NORCAL WOULD HAVE
15 BEEN IN EXCESS OF \$11 MILLION, RIGHT?

16 A. THAT'S CORRECT.

17 (PLAYING VIDEO.)

18 BY MR. FINKELSTEIN:

19 Q. NOW, WE ALSO HEARD CITY ATTORNEY DOYLE SUGGEST THAT
20 A POSSIBLE ADDITIONAL CONSIDERATION WOULD BE NORCAL NOT
21 GOING FORWARD WITH A DETRIMENTAL RELIANCE CLAIM, CORRECT?

22 A. THAT'S RIGHT.

23 Q. WHAT DID YOU UNDERSTAND HE WAS REFERRING TO?

24 A. THAT THEY WOULD COME BACK AND FILE ADDITIONAL
25 CLAIMS ON THE CITY.

26 Q. ADDITIONAL CLAIMS ON WHAT?

27 A. ON THE CITY.

28 Q. BASED UPON WHAT?

SUE HERFURTH, CSR #9645

1 A. IF WE HAD NOT APPROVED THIS.

2 Q. OKAY. YOU DON'T HAVE LEGAL TRAINING; IS THAT
3 CORRECT?

4 A. NO. OBVIOUSLY I DON'T.

5 Q. DID THE CITY ATTORNEY INFORM YOU PRIOR TO YOUR VOTE
6 ON SEPTEMBER 21, 2004 ON THE NORCAL AGREEMENT AMENDMENT,
7 ANYTHING ABOUT THE NATURE OF THE DETRIMENTAL -- I'LL START
8 AGAIN.

9 PRIOR TO YOUR VOTE ON SEPTEMBER 21, 2004 REGARDING
10 THE AMENDMENT TO THE NORCAL AGREEMENT, DID ANYONE FROM THE
11 CITY ATTORNEY'S OFFICE EXPLAIN TO YOU WHAT THE BASIS OF
12 NORCAL'S POTENTIAL DETRIMENTAL RELIANCE CLAIM WAS?

13 A. NOT THAT I RECALL.

14 Q. IF NORCAL'S DETRIMENTAL RELIANCE CLAIM HAD BEEN
15 BASED ON STATEMENTS MADE BY THE MAYOR PRIOR TO THE APPROVAL
16 OF THE ORIGINAL AGREEMENT AND SIGNING OF THE AGREEMENT
17 GIVING CERTAIN ASSURANCES TO NORCAL ABOUT EXTRA PAYMENT IF
18 IN FACT CWS SWITCHED TO THE TEAMSTERS, IS THAT INFORMATION
19 THAT WOULD HAVE BEEN IMPORTANT FOR YOU TO KNOW BEFORE YOU
20 VOTED ON SEPTEMBER 21?

21 A. IT WOULD HAVE BEEN.

22 Q. IS IT INFORMATION THAT MIGHT HAVE AFFECTED WHETHER
23 OR NOT YOU SUPPORTED THE AMENDMENT?

24 A. IT MAY HAVE.

25 (PLAYING VIDEO.)

26 BY MR. FINKELSTEIN:

27 Q. NOW, COUNCILMAN REED, WE JUST HEARD, STATED THAT HE
28 HAD BEEN TOLD THE WORKERS HAD ALREADY BEEN PAID, RIGHT?

1 A. THAT' S CORRECT.

2 Q. BASED UPON THAT STATEMENT, YOU WOULD EXPECT THAT IT
3 WOULD HAVE BEEN CLEAR TO THE COUNCIL THAT THE MONEY WAS NOT
4 GOING TO THE WORKERS?

5 A. THAT' S CORRECT.

6 Q. OKAY.

7 (PLAYING VIDEO.)

8 BY MR. FINKELSTEIN:

9 Q. COUNCILMEMBER REED APPARENTLY WAS OF THE BELIEF
10 THAT NORCAL HAD ALREADY PAID CWS FOR THESE EXTRA LABOR
11 COSTS, CORRECT?

12 A. THAT' S CORRECT.

13 Q. OKAY.

14 (PLAYING VIDEO.)

15 MR. FINKELSTEIN: IT' S 3:00 O' CLOCK. MAYBE WE
16 SHOULD TAKE A FIVE-MINUTE BREAK.

17 THE FOREPERSON: LET US RECESS FOR FIVE MINUTES,
18 AND LET ME REMIND YOU THE ADMONITION APPLIES AT ALL TIMES.

19 (A BRIEF RECESS WAS TAKEN.)

20 THE FOREPERSON: I' LL CALL THE SESSION BACK TO
21 ORDER, PLEASE.

22 BY MR. FINKELSTEIN:

23 Q. WHY DON' T WE CONTINUE WATCHING MORE OF THE VIDEO ON
24 THE COUNCIL MEETING.

25 (PLAYING VIDEO.)

26 BY MR. FINKELSTEIN:

27 Q. NOW, WE JUST HEARD THE MAYOR SAY IT WAS MADE CLEAR
28 TO US AFTER THE VOTING ON THE ORIGINAL NORCAL AGREEMENT, BUT

1 BEFORE THE SIGNING OF THE CONTRACT, I THINK, THAT THERE WAS
2 THIS JURISDICTIONAL ISSUE, CORRECT? THAT'S WHAT THE MAYOR
3 JUST SAID?

4 A. I THOUGHT HE SAID AFTER THE CONTRACT WAS, HAD BEEN
5 VOTED ON.

6 RIGHT. HE SAID AFTER, I'M SORRY. I MAY HAVE
7 MISSPOKE.

8 THE MAYOR INDICATED AFTER THE CONTRACT HAD BEEN
9 VOTED ON, THE ORIGINAL CONTRACT BACK IN OCTOBER AND DECEMBER
10 OF 2000, IT CAME TO THE MAYOR'S -- THE MAYOR SUGGESTED IT
11 THEN CAME TO LIGHT THERE WAS A JURISDICTIONAL ISSUE?

12 A. THAT'S CORRECT.

13 Q. IS IT NOT THE CASE THAT PRIOR TO THE FIRST VOTE ON
14 OCTOBER 10, 2000, THE SECRETARY OF LOCAL 350 TEAMSTERS, BOB
15 MORALES, ADDRESSED THE COUNCIL AND RAISED THIS ISSUE AND
16 REQUESTED THAT THE CITY REQUIRE A NEUTRALITY AGREEMENT TO
17 RESOLVE THIS JURISDICTIONAL ISSUE?

18 A. HE DID.

19 Q. AND THAT RESULTED IN THE OCTOBER 27 MEMO FROM RICK
20 DOYLE TO THE COUNCIL EXPLAINING THAT THE CITY COULD NOT
21 REQUIRE A NEUTRALITY AGREEMENT OF THE COMPANIES SUBMITTING
22 PROPOSALS FOR SEVERAL REASONS, POTENTIAL VIOLATION OF
23 FEDERAL LABOR LAW, CALLING INTO QUESTION THE INTEGRITY OF
24 THE RFP PROCESS AND SO FORTH, RIGHT?

25 A. THAT'S RIGHT.

26 Q. THE MAYOR'S STATEMENT ABOUT THIS COMING TO LIGHT
27 AFTER THE VOTE ON THE CONTRACT, WOULD THAT BE AN ACCURATE

28 STATEMENT?

SUE HERFURTH, CSR #9645

1109

1 A. WOULD IT BE ACCURATE?

2 Q. YES.

3 A. NO.

4 (PLAYING VIDEO.)

5 MR. FINKELSTEIN: WE'RE GOING TO ROLL BACK THE
6 VIDEO FOR A SECOND.

7 (PLAYING VIDEO.)

8 BY MR. FINKELSTEIN:

9 Q. NOW, WE JUST HEARD THE MAYOR SAY, CLARIFY HIS
10 RESPONSE TO COUNCILMEMBER CHIRCO AND SAY IT WAS KNOWN A DAY
11 OR TWO BEFORE IT WAS VOTED ON?

12 A. THAT'S CORRECT.

13 Q. WAS IT KNOWN TO YOU A DAY OR TWO BEFORE YOU VOTED
14 ON IT THAT THERE HAD BEEN A JURISDICTIONAL ISSUE?

15 A. AS I --

16 Q. THAT'S A BAD QUESTION. WAS IT KNOWN TO YOU A DAY
17 OR TWO BEFORE YOU VOTED ON THE ORIGINAL NORCAL AGREEMENT
18 THAT THERE MIGHT BE A JURISDICTIONAL ISSUE BETWEEN THE
19 LONGSHOREMEN AND TEAMSTERS?

20 A. I DON'T RECALL THAT BEING MADE KNOWN TO ME.

21 (PLAYING VIDEO.)

22 BY MR. FINKELSTEIN:

23 Q. WE JUST HEARD COUNCILMAN YEAGER ON THE VIDEO,
24 CORRECT?

25 A. THAT'S CORRECT.

26 Q. WE JUST HEARD HIM SAY THAT THESE DOLLARS, MEANING
27 THE \$11 MILLION, ARE NOT GOING TO NECESSITATE A RATE
28 INCREASE AND THEY ARE NOT GOING TO COME OUT OF THE GENERAL

SUE HERFURTH, CSR #9645

1110

1 FUND. IS HE CORRECT?

2 A. THAT'S WHAT HE SAID.

3 Q. IS THAT CORRECT?

4 A. I THINK I MENTIONED TO YOU YESTERDAY THAT WHAT WE
5 WERE BEING TOLD IS BECAUSE WE WERE SAVING SO MUCH MORE MONEY
6 WITH THIS CONTRACT, THAT SOMEHOW IT WOULD NOT HAVE A
7 NEGATIVE IMPACT ON THE GENERAL FUND.

8 Q. WHO TOLD YOU THAT?

9 A. THAT WAS THE GENERAL CONVERSATIONS. AS A MATTER OF
10 FACT, I THINK YOU'VE HEARD A COUPLE OF COUNCILMEMBERS
11 SUGGEST THAT THIS WAS GOING TO BE, WE WERE GOING TO BE
12 SAVING MONEY AND PROVIDING BETTER SERVICES WITH THIS
13 CONTRACT.

14 Q. OKAY. LET ME TRY, I GUESS, A HOME-SPUN EXAMPLE. I
15 GO INTO A CAR DEALERSHIP BASED ON AN AD. THE NEWSPAPER SAYS
16 THE PRICE OF A CAR IS \$20,000, AND I WALK INTO THE
17 DEALERSHIP AND THE SALESMAN SAYS, WELL, ACTUALLY, THE PRICE
18 IS NOW \$22,000, BUT IT'S STILL CHEAPER THAN THE COMPETITION.
19 I HAVE TO COME UP WITH 2,000 ADDITIONAL DOLLARS, DON'T I, TO
20 BUY THE CAR?

21 A. THAT'S CORRECT.

22 Q. SO REGARDLESS OF WHETHER WITH THIS \$11 MILLION IT
23 IS STILL CHEAPER THAN THE NEXT LOWEST BID, IT'S STILL \$11

24 MILLION MORE EXPENSIVE, IS IT NOT?

25 A. THAT'S CORRECT.

26 Q. SO WHERE WOULD THE MONEY HAVE COME FROM IF IT
27 DIDN'T COME FROM THE GENERAL FUND AND A RATE INCREASE?

28 A. I SAID YESTERDAY IT WOULD COME FROM THE GENERAL

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1111

1 FUND.

2 Q. SO COUNCILMAN YEAGER'S STATEMENT EXPRESSING THE
3 BELIEF THAT IT WOULD NOT COME FROM THE GENERAL FUND YOU
4 WOULD SAY IS NOT CORRECT?

5 A. IT'S NOT CORRECT.

6 (PLAYING VIDEO.)

7 BY MR. FINKELSTEIN:

8 Q. SO WE JUST HEARD YOUR REMARKS ON THE VIDEO, AND
9 YOU'RE TALKING ABOUT STILL SAVING MONEY. DID YOU MEAN
10 SAVING MONEY IN COMPARISON TO HAVING GONE WITH THE NEXT
11 LOWEST BIDDER?

12 A. YES. EVEN IF WE HAD GONE TO THE NEXT LOWEST
13 BIDDER, WE STILL WOULD STILL BE SAVING MONEY WITH THIS
14 CONTRACT.

15 Q. BUT YOU WOULD NOT BE SAVING MONEY IN THE SENSE THAT
16 \$11 MILLION IN ADDITIONAL PAYMENTS COST \$11 MILLION MORE TO
17 THE CITY.

18 A. THAT SEEMS VERY CLEAR TODAY, BUT AT THE TIME, AS
19 YOU CAN TELL BY THE DISCUSSION WITH MYSELF AND OTHERS, THERE
20 WAS A PERCEPTION THAT WITH THIS CONTRACT THAT WE WERE
21 PROVIDING BETTER SERVICES AT A LOWER COST. AND EVEN WITH

22 ADDING THE ADDITIONAL \$11 MILLION, THE CITY WAS STILL
23 GETTING A BETTER DEAL THAN IT WOULD HAVE HAD IT GONE WITH
24 THE NEXT LOWEST BID.

25 Q. RIGHT. BUT THE CITY COULD HAVE SAID NO TO THE
26 AMENDMENT AND NORCAL WOULD HAVE STILL BEEN OBLIGATED UNDER
27 THE EXISTING AGREEMENT TO PROVIDE THAT BETTER SERVICE.
28 ISN'T THAT TRUE?

SUE HERFURTH, CSR #9645

1112

1 A. THAT'S TRUE.

2 (PLAYING VIDEO.)

3 BY MR. FINKELSTEIN:

4 Q. NOW, WE JUST HEARD ON THE VIDEO OF THE COUNCIL
5 PROCEEDING DEPUTY CITY MANAGER JIM HOLGERSON SAY THAT THE
6 ACTUAL RATES THAT THE CITY HAS IN PLACE TODAY WILL PAY FOR
7 THIS AMENDMENT, CORRECT?

8 A. THAT'S CORRECT.

9 Q. AND THAT INCLUDED THE NINE PERCENT THAT WAS TALKED
10 ABOUT YESTERDAY IN MAY OF '03, RIGHT?

11 A. THAT'S CORRECT.

12 Q. AND A SECOND NINE PERCENT IN '04, I THINK; IS THAT
13 RIGHT?

14 A. YES.

15 Q. DID THAT SUGGEST TO YOU AT THE TIME THAT THESE RATE
16 INCREASES IN '03 AND '04 WERE DONE IN ANTICIPATION OF PAYING
17 FOR THIS \$11 MILLION AMENDMENT?

18 A. AT THE TIME I DIDN'T EQUATE IT TO THEY WERE
19 EXPECTING THIS TO COME FORWARD.

20 Q. AND NOW?

21 A. BUT NOW IT APPEARS THAT PERHAPS THEY DID. AS I
22 MENTIONED TO YOU YESTERDAY I VOTED AGAINST THOSE TWO RAISES
23 BECAUSE I DIDN'T THINK IF WE WERE SAVING MONEY ON THIS
24 CONTRACT, WHY WERE WE RAISING RATES. SO IN HINDSIGHT
25 PERHAPS THERE WAS SOME REASON TO RAISE THE RATES THOSE TWO
26 SEPARATE TIMES THAT I WAS NOT TOLD WHEN I WAS ASKING, WHY
27 ARE WE RAISING RATES IF WE ARE SUPPOSED TO BE SAVING MONEY?

28 Q. JUST TO LOOK AT THE ARITHMETIC OF IT, THE \$11

SUE HERFURTH, CSR #9645

1113

1 MILLION HAS TO COME FROM SOMEWHERE, EITHER FROM THE GENERAL
2 FUND OR FROM THE RATES. AND WE JUST HEARD JIM HOLGERSON SAY
3 THAT WE DON'T HAVE TO RAISE THE RATES FURTHER TO PAY FOR
4 THIS, AND THE ONLY WAY THAT COULD BE IS IF THE RATES WERE
5 RAISED PREVIOUSLY TO PAY FOR THIS, CORRECT?

6 A. THAT'S RIGHT.

7 (PLAYING VIDEO.)

8 BY MR. FINKELSTEIN:

9 Q. JUST -- I WANT TO STOP THE VIDEO FOR A SECOND. YOU
10 JUST HEARD COUNCILMEMBER CORTESE REITERATE COMMENTS
11 MR. MORALES MADE EARLIER IN THE VIDEO AT THE MEETING
12 APPARENTLY ABOUT CONTACTING EVERY COUNCILMEMBER. JUST TO BE
13 CLEAR, DID HE CONTACT YOU?

14 A. I DON'T RECALL, IT WOULD HAVE BEEN UNUSUAL FOR
15 MR. MORALES TO CONTACT ME OR FOR AMY DEAN TO CONTACT ME. I
16 DON'T REMEMBER THAT IF IT OCCURRED.

17 Q. WHY IS THAT?

18 A. AS I MENTIONED COUPLE OF TIMES, I WAS NOT GENERALLY
19 THE PERSON THAT UNION LEADERS CAME TO FOR ADVICE OR SUPPORT.

20 Q. OKAY.

21 (PLAYING VIDEO.)

22 MR. FINKELSTEIN: WE' RE HAVING TECHNICAL
23 DIFFICULTIES. WE' RE JUST GOING TO REWIND.
24 BEAR WITH US FOR A MOMENT.

25 (PLAYING VIDEO.)

26 BY MR. FINKELSTEIN:

27 Q. WE JUST HEARD YOU SAY YOU WERE ASSURED THE MONEY
28 WOULD GO TO THE WORKERS, NOT NORCAL.

SUE HERFURTH, CSR #9645

1114

1 A. THAT' S CORRECT.

2 Q. WHO GAVE YOU THAT ASSURANCE?

3 A. I DON' T THINK I CAN NAME AN INDIVIDUAL. IN THE
4 COURSE OF CONVERSATION, THOUGH, WITH SEVERAL PEOPLE, AND TO
5 TELL YOU THE TRUTH I CAN' T TELL YOU WHO IT WOULD HAVE BEEN
6 NOW.

7 Q. IF YOU CAN' T, YOU CAN' T.

8 A. NO, I' M SORRY.

9 Q. AT THE TIME YOU MADE A COMMENT YOU DIDN' T KNOW
10 ABOUT THIS OCTOBER 9 ADDENDUM TO THE NORCAL/CWS AGREEMENT
11 WHEREBY NORCAL OBLIGATED ITSELF TO REIMBURSE CWS FOR
12 ADDITIONAL LABOR COSTS, RIGHT?

13 A. RIGHT.

14 Q. HAD YOU KNOWN ABOUT THAT, YOUR VIEW OF THIS MIGHT
15 HAVE BEEN DIFFERENT, CORRECT?

16 A. IT MAY HAVE BEEN DIFFERENT. AS I SAY, IT'S HARD TO
17 RECOLLECT EXACTLY WHAT THE THINKING WAS, BUT I BELIEVE IT
18 WAS THAT THERE WAS A REIMBURSEMENT OR THIS WAS A, THIS WOULD
19 NOT GO TO THE PROFIT OF NORCAL.

20 (PLAYING VIDEO.)

21 BY MR. FINKELSTEIN:

22 Q. DID COUNCILMAN CORTESE HIT THE NAIL ON THE HEAD
23 WHEN HE SAID THE MAYOR STEPPED IN TO MEDIATE, AND THE
24 MEDIATOR WOULD UP NAMING THE CITY TO PAY THE SETTLEMENT?

25 A. IT SOUNDS AS IF HE MAY HAVE HIT IT ON THE HEAD.

26 Q. I'LL RESUME THE TAPE IN A MINUTE, BUT COUNCILMAN
27 CORTESE MADE A COMMENT ABOUT HE WOULDN'T SUPPORT THE
28 CONTRACT HAD HE KNOWN AT THE TIME THESE LOW WAGES WERE BEING

SUE HERFURTH, CSR #9645

1115

1 PAID TO THE WORKERS, RIGHT?

2 A. THAT'S RIGHT.

3 Q. OF COURSE, IS THERE ANY REASON THAT THE PARTIES
4 COULD NOT HAVE SIMPLY RAISED THE WAGES OF LONGSHOREMEN
5 INSTEAD OF SWITCHING TO THE TEAMSTERS?

6 A. IT WOULD SEEM LIKE THEY COULD.

7 Q. YEAH. IN OTHER WORDS, THERE WAS NOTHING PREVENTING
8 CWS, NORCAL, AND THE CITY AGREEING THAT THE LONGSHOREMEN
9 WAGES BE ELEVATED.

10 A. THAT'S CORRECT.

11 (PLAYING VIDEO.)

12 BY MR. FINKELSTEIN:

13 Q. WE JUST HEARD AN EXCHANGE BETWEEN COUNCILMEMBER

14 REED AND JIM HOLGERSON ABOUT RATES OF THE RESERVE AND
15 GENERAL FUND, CORRECT?

16 A. THAT'S CORRECT.

17 Q. SO IF YOU'RE AT CLOSE TO 100 PERCENT COST RECOVERY
18 AND YOU'RE NOT GOING TO RAISE THE RATES, AND YOU'RE GOING TO
19 PAY AN ADDITIONAL \$11 MILLION TO NORCAL, DOESN'T THAT MAKE
20 IT QUITE CLEAR THAT THOSE PRIOR RATE INCREASES FROM THE YEAR
21 BEFORE AND THE CURRENT YEAR MUST HAVE ANTICIPATED THIS \$11
22 MILLION ADDITIONAL PAYMENTS TO NORCAL?

23 A. THAT'S WHAT IT WOULD APPEAR TO ME TODAY.

24 Q. I TAKE IT YOU DIDN'T MAKE THAT CONNECTION BACK
25 THEN.

26 A. I DID NOT.

27 (PLAYING VIDEO.)

28 BY MR. FINKELSTEIN:

SUE HERFURTH, CSR #9645

1116

1 Q. WE JUST HEARD YOU MAKE COMMENTS ABOUT OTHER OPTIONS
2 TO AMENDING THE AGREEMENT WITH NORCAL, CORRECT?

3 A. THAT'S CORRECT.

4 Q. AND YOU SUGGESTED THAT ONE OF THE OPTIONS WOULD BE
5 NOT PAYING IT, AND THEN THE WORKERS WOULD BE SUBSIDIZING THE
6 COST OF THE SERVICE AND YOU WOULD HAVE A STRIKE, CORRECT?

7 A. THAT'S CORRECT.

8 Q. AND THE REASON YOU THOUGHT THAT IS BECAUSE YOU HAD
9 NOT BEEN INFORMED ABOUT THE COLLECTIVE BARGAINING AGREEMENT
10 THAT HAD BEEN ENTERED INTO BY THE CWS WORKERS WITH THE
11 TEAMSTERS THE YEAR BEFORE, RIGHT?

12 A. THAT' S CORRECT.

13 Q. AND YOU ALSO HAD NOT BEEN MADE AWARE OF THIS
14 ADDENDUM OBLIGATING NORCAL TO REIMBURSE CWS FOR THE EXTRA
15 LABOR COSTS?

16 A. THAT' S CORRECT.

17 (PLAYING VIDEO.)

18 BY MR. FINKELSTEIN:

19 Q. YOU JUST HEARD -- I WOULD LIKE TO GO A FEW MORE
20 MINUTES SO WE CAN FINISH. YOU HEARD COUNCILMEMBER LEZOTTE
21 SAY THAT NORCAL' S LETTER SAID THAT THE DEAL WAS STRUCK IN
22 2000. DID YOU HEAR THAT COMMENT?

23 A. I DID.

24 Q. DO YOU KNOW WHAT LETTER SHE IS REFERRING TO?

25 A. I DON' T.

26 Q. DO YOU HAVE THE EXHIBIT THAT HAS THE SEPTEMBER 16
27 MEMO FROM JIM HOLGERSON TO THE CITY COUNCIL?

28 A. YES, I DO.

SUE HERFURTH, CSR #9645

1117

1 Q. NOW, IF YOU LOOK AT THAT EXHIBIT, WE' LL SEE THERE' S
2 AN ATTACHMENT A. LET ME GET IT UP ON THE SCREEN.

3 AND ATTACHMENT A IS A LETTER FROM NORCAL; IS THAT
4 CORRECT?

5 A. THAT' S CORRECT.

6 Q. IF YOU LOOK AT THE SECOND PARAGRAPH ON THE
7 ENLARGEMENT, IT BEGINS, "LET ME FIRST RECOUNT SOME
8 BACKGROUND RELATING TO THE ADDITIONAL LABOR COSTS CWS IS
9 INCURRING." DO YOU SEE THAT?

10 A. I DO.

11 Q. IT SAYS:

12 WHEN NORCAL PRESENTED ITS RECYCLE PLUS
13 PROPOSAL IN RESPONSE TO THE CITY'S RFP IN 2000, IT
14 BECAME KNOWN THAT NORCAL'S PROPOSED RECYCLING
15 SUBCONTRACTOR CWS INTENDED TO HIRE WORKERS UNDER A
16 LABOR CONTRACT CWS THEN HAD IN OAKLAND WITH THE
17 LONGSHOREMEN'S UNION. UNDER THAT CONTRACT, CWS
18 WAS PAYING ITS WORKERS CONSIDERABLY LESS THAN THE
19 WORKERS ORGANIZED BY THE TEAMSTERS WERE RECEIVING
20 AT THE RECYCLING FACILITY THEN IN OPERATION IN
21 SAN JOSE.

22 THIS SIGNIFICANT WAGE DISCREPANCY, ALONG WITH
23 THE POSSIBILITY THAT SAN JOSE WORKERS MIGHT LOSE
24 THEIR JOBS, PROMPTED THE MAYOR'S OFFICE TO URGE
25 NORCAL TO EXPLORE AN ARRANGEMENT FOR CWS THAT
26 WOULD ALLOW CWS TO RETAIN EXISTING WORKERS AT THE
27 HIGHER TEAMSTER WAGE SCALE.

28 DO YOU SEE THAT?

SUE HERFURTH, CSR #9645

1118

1 A. YES.

2 Q. DO YOU RECALL WHETHER OR NOT YOU SAW THAT LETTER
3 BACK IN SEPTEMBER OF 2004?

4 A. IN 2004, YES.

5 Q. YOU DID SEE THAT LETTER?

6 A. YES.

7 Q. WHAT DID YOU THINK THAT PASSAGE I JUST READ TO YOU
Page 112

8 REFERRED TO?

9 A. IT SOUNDED AS THOUGH THAT THERE HAD BEEN A
10 DISCUSSION WITH SOMEONE IN 2000 THAT THERE WAS GREATER LABOR
11 UNREST THAN I KNEW OF.

12 Q. AND WHAT ABOUT THE REFERENCE TO THE MAYOR, THE
13 RECOMMENDATION THAT SAYS --

14 A. MAYOR'S OFFICE URGED --

15 Q. YES, URGED NORCAL TO EXPLORE AN ARRANGEMENT WITH
16 CWS AND TEAMSTERS.

17 A. IT SOUNDED AS THOUGH THE MAYOR HAD HAD
18 CONVERSATIONS WITH THEM ABOUT LABOR UNREST.

19 Q. SO YOU KNEW THAT THE CITY ATTORNEY ISSUED AN
20 OPINION SAYING THE CITY COULD NOT GET INVOLVED IN A DISPUTE
21 WITH TWO UNIONS?

22 A. RIGHT.

23 Q. THIS WAS A DISPUTE BETWEEN TWO UNIONS, CORRECT?

24 A. THAT'S CORRECT.

25 Q. THIS LETTER SUGGESTED THAT THE MAYOR HAD GOTTEN
26 INVOLVED IN THIS DISPUTE TO STEER CWS TO THE TEAMSTERS,
27 CORRECT?

28 A. IT DOES APPEAR THAT WAY.

SUE HERFURTH, CSR #9645

1119

1 Q. DID YOU ASK THE MAYOR WHAT THAT REFERENCE WAS ALL
2 ABOUT?

3 A. NO. AT THE TIME, THE DISCUSSION YOU HEARD AMONGST
4 COUNCILMEMBERS, THE GENERAL THINKING WAS IN ORDER TO PREVENT
5 A STRIKE HE BROUGHT THE INDIVIDUALS BACK TO THE TABLE SO

6 THAT THEY COULD WORK IT OUT THEMSELVES.

7 Q. RIGHT. BUT 2000 WAS TWO YEARS BEFORE THE SERVICES
8 WERE SUPPOSED TO START, RIGHT?

9 A. THAT'S RIGHT.

10 Q. SO A STRIKE IN 2000 BY ANYBODY WOULD HAVE NO IMPACT
11 ON THE SERVICE THAT WAS SUPPOSED TO COMMENCE IN 2002, WOULD
12 IT?

13 A. THAT'S CORRECT.

14 Q. SO WERE YOU CONFUSED ON THIS ISSUE THEN?

15 A. NOT AT THE TIME. I AM NOW.

16 Q. WELL, BY THAT DO YOU MEAN YOU DIDN'T THINK YOU WERE
17 AT THE TIME, BUT NOW LOOKING BACK YOU THINK YOU WERE?

18 A. WELL, THERE ARE, IT SEEMS TO BE THERE APPEARS TO BE
19 MORE CLARITY ON WHAT MAY HAVE HAPPENED AND WHAT DIDN'T
20 HAPPEN. AS I SAID, I SAID SEVERAL TIMES I DID NOT
21 GENERALLY, WAS NOT THAT CLOSELY INVOLVED WITH UNION ISSUES.

22 Q. I'M GOING TO FINISH THE TAPE IN JUST A FEW MORE
23 MINUTES, BUT HAVING LISTENED TO THE VAST MAJORITY OF THIS --
24 I KEEP CALLING IT A TAPE -- THIS VIDEO, THIS DISC, IS IT NOT
25 THE CASE THAT THE CONSIDERATION THAT IS RECITED IN THE
26 AGREEMENT AMENDING THE CONTRACT, THE 10 ADDITIONAL
27 NEIGHBORHOOD CLEANUP BINS, THE E-WASTE SCRAP PROGRAM, AND
28 THE GARBAGE COMPOSITION STUDY, THAT'S NOT REALLY WHAT THIS

SUE HERFURTH, CSR #9645

1120

1 AMENDMENT IS ABOUT, IS IT?

2 A. IT IS NOT.

3 Q. THIS IS REALLY EXCLUSIVELY ABOUT PAYING AN

4 ADDITIONAL \$11 MILLION TO NORCAL FOR EXTRA LABOR COSTS,
5 RIGHT?

6 A. THAT'S CORRECT.

7 Q. SO WOULDN'T THAT MAKE THE CONSIDERATION RECITED IN
8 THE OFFICIAL AGREEMENT WINDOW DRESSING?

9 A. IT WOULD APPEAR THAT WAY, YES.

10 (PLAYING VIDEO.)

11 BY MR. FINKELSTEIN:

12 Q. WE JUST HEARD COUNCILMEMBER WILLIAMS MAKE REFERENCE
13 TO A ONE-DAY WORK STOPPAGE AND LOTS OF CALLS ABOUT GARBAGE
14 PICKUP, RIGHT?

15 A. THAT'S RIGHT.

16 Q. THE ONE-DAY STOPPAGE WAS AT THE CWS RECYCLING
17 FACILITY?

18 A. THAT'S CORRECT.

19 Q. IT DIDN'T HAVE ANY IMPACT ON PICKING UP FROM THE
20 RESIDENTS?

21 A. NOT THAT I'M AWARE OF.

22 (PLAYING VIDEO.)

23 BY MR. FINKELSTEIN:

24 Q. NOW, AFTER -- LET ME SEE IF I CAN GET THROUGH THIS
25 QUICKLY, BECAUSE I KNOW YOU DON'T WANT TO COME BACK.

26 A. I WOULD APPRECIATE IT, ALTHOUGH I LIKE YOU ALL.

27 Q. AFTER SEPTEMBER 21, 2004, THE COUNCIL VOTED AGAIN
28 ON THE AMENDMENT; IS THAT RIGHT?

SUE HERFURTH, CSR #9645

1121

1 A. THAT'S CORRECT.

2 Q. THAT WAS ON, I BELIEVE, SEPTEMBER 14, 2004, IF YOU
3 RECALL?

4 WHY DON'T I MARK AS EXHIBIT 95 A CERTIFIED COPY OF
5 THE SAN JOSE CITY COUNCIL MINUTES FOR DECEMBER 14, 2004.

6 THE FOREPERSON: SO MARKED.

7 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
8 JURY EXHIBIT 95.)

9 BY MR. FINKELSTEIN:

10 Q. DO I HAVE IT RIGHT, ON DECEMBER 14, 2004 THE
11 COUNCIL TOOK A SECOND VOTE AND APPROVED THE AMENDMENT?

12 A. THAT'S CORRECT.

13 Q. NOW, ACCORDING TO THE MINUTES, YOU HAD ASKED A
14 QUESTION, APPARENTLY -- LET ME BREAK IT DOWN.

15 THE MINUTES REFLECT THAT IN RESPONSE TO VICE
16 MAYOR DANDO'S QUESTION ABOUT WHO MADE THE REQUEST
17 TO NEGOTIATE WITH LOCAL 350 RATHER THAN
18 LONGSHOREMEN, NORCAL REPRESENTATIVE NICOLETTI SAID
19 HE DID NOT KNOW AND CLARIFIED THE NEGOTIATIONS
20 WERE WITH THE SUBCONTRACTOR, CALIFORNIA WASTE
21 SOLUTIONS, AND NOT NORCAL. HE ADDED THAT HE WAS
22 NOT WITH NORCAL DURING THE INITIAL PERIOD OF THE
23 NEGOTIATIONS AND CONFIRMED AT THE REQUEST --

24 (INTERRUPTION BY THE COURT REPORTER.)

25 CONFIRMED AT THE REQUEST OF COUNCILMEMBER
26 CORTESE THAT HE HAD NO PERSONAL KNOWLEDGE OF HOW
27 IT CAME TO BE THAT NEGOTIATIONS WERE WITH LOCAL
28 350 AS OPPOSED TO THE LONGSHOREMEN.

1 BY MR. FINKELSTEIN:
2 Q. DO YOU SEE THAT SECTION IN THE MEMO?
3 A. YES.
4 Q. IN THE MINUTES, RATHER?
5 A. YES.
6 Q. IS THAT ACCURATE TO THE BEST OF YOUR RECOLLECTION?
7 A. TO THE BEST OF, YES.
8 Q. WHAT IS IT THAT PROMPTED YOUR QUESTION ABOUT WHO
9 MADE THE REQUEST TO NEGOTIATE WITH LOCAL 350?
10 A. BECAUSE, AS I SAID IN THE TAPE WE WATCHED, I HAD
11 NOT, I DIDN'T KNOW ABOUT THE NEGOTIATIONS BETWEEN THE
12 UNIONS. I DIDN'T KNOW THAT THERE WAS DISCUSSION GOING ON
13 ABOUT WHICH UNION SHOULD REPRESENT WHICH GROUP.
14 Q. RIGHT, BUT WHY DID YOU CARE WHO MADE THE REQUEST?
15 A. I'M SORRY?
16 Q. WHY WERE YOU INTERESTED TO LEARN WHO HAD MADE THE
17 REQUEST TO NEGOTIATE WITH THE TEAMSTERS?
18 A. BECAUSE I THOUGHT IT MIGHT HAVE SOME BEARING ON THE
19 OUTCOME.
20 Q. IN WHAT WAY?
21 A. WELL, THERE ARE A COUPLE OF INDIVIDUALS THAT ARE
22 GENERALLY INVOLVED IN UNION NEGOTIATIONS. AND I WANTED TO
23 KNOW WHO WAS INVOLVED WITH MAKING THIS REQUEST.
24 Q. WELL, WHO WERE YOU REFERRING TO SPECIFICALLY?
25 A. WHICH COUNCILMEMBERS?
26 Q. YES.
27 A. UH -- MAYOR GONZALES AND CINDY CHAVEZ.
28 Q. SORRY, WHO?

1 A. CINDY CHAVEZ.

2 Q. SO, AND JUST TO CONCLUDE, A COUPLE POINTS AND I
3 THINK WE MIGHT BE DONE.

4 PRIOR TO EITHER THE FIRST OR SECOND VOTE ON THE
5 NORCAL AMENDMENT, THE \$11 MILLION AMENDMENT, DID ANYONE FROM
6 NORCAL OR ON BEHALF OF NORCAL LOBBY YOU TO VOTE IN FAVOR OF
7 THE AMENDMENT?

8 A. UH -- NO. WELL, AS I MENTIONED TO YOU BEFORE, I
9 DID MEET WITH BILL JONES AND A COUPLE OF OTHER INDIVIDUALS.

10 Q. THAT WAS PRIOR TO THE ORIGINAL AGREEMENT?

11 A. YES.

12 Q. I'M TALKING ABOUT PRIOR TO, AFTER THAT, PRIOR TO
13 THE VOTE ON THE AMENDMENT.

14 A. AS I RECALL, JOE GUERRA MAY HAVE MET WITH ME AND
15 SAID, WE NEED YOUR SUPPORT ON THIS. HE KNEW THAT I HAD SOME
16 QUESTIONS.

17 Q. THAT WAS BEFORE THE FIRST VOTE ON THE AMENDMENT OR
18 BETWEEN THE FIRST AND SECOND VOTE ON THE AMENDMENT?

19 A. TO THE BEST OF MY RECOLLECTION, IT WAS BETWEEN THE
20 FIRST AND SECOND.

21 Q. BUT DIDN'T THEY ALREADY HAVE YOUR SUPPORT SINCE YOU
22 SIGNED ONTO THE SEPTEMBER 16 MEMO?

23 A. RIGHT.

24 Q. WHY WAS IT NECESSARY FOR HIM TO MEET AGAIN WITH YOU
25 AND REITERATE THAT HE NEEDED YOUR SUPPORT?

26 A. I THINK BECAUSE OF THE QUESTIONS I CONTINUED TO
27 ASK, HE PROBABLY WANTED TO MAKE SURE I WOULD STILL BE
28 SUPPORTIVE.

1 Q. OKAY. AND DID HE ELABORATE ON WHY HE NEEDED YOUR
2 SUPPORT?

3 A. NO, OTHER THAN I ASSUME HE WAS LOOKING FOR SIX
4 VOTES.

5 Q. RIGHT. SOMETIMES WHEN PEOPLE SEEK SUPPORT, THEY
6 GIVE SUBSTANTIVE REASONS OTHER THAN NEEDING A NUMBER OF
7 VOTES, LIKE, THIS IS REALLY IMPORTANT BECAUSE OF X, Y, OR Z.

8 A. I DON'T THINK THERE WAS ANY THIS IS IMPORTANT
9 BECAUSE OF X, Y, OR Z. AGAIN, THIS IS COMING FROM MY BEST
10 RECOLLECTION, WHICH I HAVE TO TELL YOU, THINGS GET FUZZIER
11 EACH DAY.

12 Q. OF COURSE, IT WAS TWO YEARS GO.

13 A. YEAH, AND NOT ONLY WAS IT TWO YEARS AGO, BUT OVER
14 THE COURSE OF A SIX-YEAR PERIOD GOING BACK TO WHEN THIS
15 FIRST STARTED, IT BECOMES A LITTLE BIT MORE UNCLEAR. BUT I
16 THINK THAT THE GENERAL THOUGHT IS THAT WE KNEW THAT THERE
17 WAS GOING TO BE LABOR UNREST, THERE WOULD NOT BE LABOR
18 PEACE, THERE WERE THREATS OF STRIKES. HE THOUGHT THE MAYOR
19 HAD DONE A GOOD JOB IN PREVENTING WHAT HE THOUGHT COULD HAVE
20 BEEN DETRIMENTAL TO THE COMMUNITY AND SERVICE. AND SO HE
21 WANTED TO MAKE SURE THAT HE COULD SUPPORT THAT.

22 Q. OKAY. SO?

23 A. I MIGHT ALSO ADD THAT, AGAIN, BECAUSE I WAS NOT THE
24 TRADITIONAL PERSON THAT MIGHT SUPPORT SOMETHING THAT WAS
25 DEALING WITH LABOR, I WOULD IMAGINE THAT HE WANTED TO MAKE
26 SURE I WAS STILL SUPPORTIVE OF WHAT HAD BEEN PRESENTED.

27 Q. OKAY. SO WE'VE LOOKED AT, I GUESS, LET ME CALL IT
28 CLUES THAT MIGHT HAVE LED A PERSON TO REALIZE THERE WAS MORE

SUE HERFURTH, CSR #9645

1125

1 TO THIS THAN APPEARED ON THE SURFACE.

2 NOW I WANT TO ASK YOU WHEN YOU CONNECTED THE DOTS
3 AND FIRST CAME TO REALIZE THAT THERE MIGHT HAVE BEEN
4 PROMISES OR REPRESENTATIONS MADE TO NORCAL BEFORE NORCAL WAS
5 APPROVED BACK IN 2000 AS ONE OF THE VENDORS.

6 A. I THINK WHEN IT BECAME, IT'S CERTAINLY VERY CLEAR
7 NOW FROM WHAT I HEAR AND READ. I THINK IT ALSO --

8 Q. I WANT TO FOCUS IN ON WHEN YOU FIRST CONNECTED THE
9 DOTS.

10 A. IT WAS PROBABLY BETWEEN THE FIRST AND THE SECOND
11 HEARING OF THE COUNCIL, SO BETWEEN THE FIRST APPROVAL AND
12 SECOND.

13 Q. IN 2004?

14 A. RIGHT.

15 Q. SO WHY DID YOU GO AHEAD AND VOTE IN FAVOR OF THE
16 AMENDMENT ON DECEMBER 4, 2004?

17 A. MY REASONS REALLY HAVEN'T CHANGED MUCH FROM WHAT I
18 SAID ON THE TAPE THAT WE JUST WATCHED.

19 Q. OKAY. THAT'S FINE.

20 MR. FINKELSTEIN: ARE THERE ANY QUESTIONS FOR THIS
21 WITNESS? I HAVE ONE QUESTION. ANY OTHERS?
22 BY MR. FINKELSTEIN:

23 Q. WHAT ONE OF THE JURORS WOULD LIKE TO KNOW IS, IN
24 YOUR OPINION, WHY SAN JOSE CITY GOVERNMENT DIDN'T ASK

25 QUESTIONS THAT MIGHT HAVE BROUGHT THIS TO LIGHT SOONER.

26 A. WELL, IN RETROSPECT, CERTAINLY THERE WERE PROBABLY
27 A LOT OF AREAS THAT QUESTIONS SHOULD HAVE BEEN ASKED, BUT AS
28 YOU HEARD FROM THE TAPE TODAY, I THINK THAT SETS OUT A

SUE HERFURTH, CSR #9645

1126

1 PRETTY GOOD SCENARIO OF WHAT WAS HAPPENING. WE WERE BEING
2 ADVISED BY THE CITY ATTORNEY AND CITY STAFF THAT WE WERE
3 APPROVING A CONTRACT THAT WOULD SAVE THE CITY MONEY, THAT WE
4 WOULD NOT HAVE TO HAVE TO RAISE FEES IN THE FUTURE, AND THAT
5 CUSTOMERS WOULD RECEIVE BETTER SERVICES.

6 Q. YEAH, BUT I THINK, AS WE ALSO SAW TODAY, WHAT YOU
7 THOUGHT TO BE THE CASE BACK THEN DOESN'T APPEAR TO BE
8 ACCURATE.

9 A. THAT'S TRUE. OBVIOUSLY, THERE WERE PLACES ALONG
10 THE WAY THERE PROBABLY SHOULD HAVE BEEN ADDITIONAL QUESTIONS
11 ASKED.

12 A JUROR: I HAVE A QUESTION.

13 MR. FINKELSTEIN: I HAVE ANOTHER QUESTION FROM A
14 JUROR. IT ASKS YOU TO STATE PERSONAL OPINION SUGGESTING WHO
15 HAS RESPONSIBILITY OR LIABILITY FOR THESE MATTERS, AND THAT
16 WOULD NOT BE AN APPROPRIATE QUESTION.

17 A JUROR: THAT'S FINE.

18 MR. FINKELSTEIN: WE HAVE TO DEAL WITH THE
19 EVIDENCE.

20 OH, WE HAVE JUST A QUESTION ON CITY GOVERNMENT
21 PROCEDURE.

22 Q. HOW IS THE VICE MAYOR SELECTED AND HOW IS THE

23 PERSON CHOSEN?

24 A. IT'S THE CHOICE OF THE MAYOR.

25 Q. AND IS THERE A TERM OF OFFICE, OR IS IT --

26 A. NO, IT'S ON THE WILL OF THE MAYOR. IT'S GENERALLY
27 TWO YEARS.

28 Q. IT'S SELECTED BY THE MAYOR, AND THE PERSON SERVES

SUE HERFURTH, CSR #9645

1127

1 AT THE PLEASURE OF THE MAYOR?

2 A. THE MAYOR APPOINTS THE VICE MAYOR AND THE COUNCIL
3 APPROVES IT.

4 MR. FINKELSTEIN: I SEE. OKAY. ANYTHING ELSE?

5 I WANT TO THANK YOU VERY MUCH. UNFORTUNATELY, I
6 CANNOT EXCUSE YOU, WHICH MEANS IF SOMETHING COMES UP, YOU'RE
7 SUBJECT TO BEING RECALLED. WE'LL NOTIFY YOU OF WHEN WE NEED
8 YOU BACK, IF WE DO. YOU'RE FREE TO GO ABOUT YOUR BUSINESS
9 FROM THIS POINT.

10 THE FOREPERSON WILL REMIND YOU OF THE ADMONITION
11 NOT TO DIVULGE WHAT HAPPENS HERE.

12 THE FOREPERSON: I'VE READ THE FULL ADMONITION OF
13 CONFIDENTIALITY, WHICH APPLIES AT LEAST UNTIL THE COURT
14 RELEASES A TRANSCRIPT OF THIS HEARING. YOU'RE ADMONISHED
15 NOT TO TALK ABOUT THESE MATTERS.

16 THE WITNESS: I DO HAVE A QUESTION. WILL THIS BE
17 MADE PUBLIC AT SOME POINT?

18 MR. FINKELSTEIN: I CAN'T ANSWER THAT QUESTION,
19 BECAUSE IT DEPENDS ON THE OUTCOME OF THIS INVESTIGATION.

20 THE WITNESS: IS THERE A TIME LINE WHEN YOU THINK

21 THE INVESTIGATION MIGHT BE COMPLETE?

22 MR. FINKELSTEIN: THIS GRAND JURY'S TERM WILL
23 EXPIRE AT THE END OF JUNE, SO IT WILL HAVE TO BE COMPLETED
24 BEFORE THEN.

25 THE WITNESS: THANK YOU.

26 MR. FINKELSTEIN: SURE. THANK YOU.

27 THE FOREPERSON: ARE WE READY TO ADJOURN FOR
28 TODAY?

SUE HERFURTH, CSR #9645

1128

1 MR. FINKELSTEIN: YES.

2 THE FOREPERSON: WE WILL RECONVENE TOMORROW,
3 THURSDAY, AT 1:30.

4 (COURT WAS ADJOURNED FOR THE DAY.)

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SUE HERFURTH, CSR #9645

1129

1 SAN JOSE, CALIFORNIA APRIL 6, 2006

2

3

PROCEEDINGS:

4

(THE FOLLOWING PROCEEDINGS TOOK PLACE OUTSIDE THE PRESENCE OF THE GRAND JURY.)

5

6

THE COURT: GOOD MORNING. WELCOME TO DEPARTMENT 21. THIS IS A HEARING WITH RESPECT TO A GRAND JURY MATTER, AND I'LL ORDER THAT THE RECORD OF THIS HEARING BE SEALED PENDING FURTHER ORDER OF THE COURT.

7

8

9

10

I'LL ALSO ADMONISH COUNSEL THAT THE MATTERS DISCUSSED DURING THIS HEARING ARE CONFIDENTIAL, BECAUSE THEY ARE GRAND JURY MATTERS, AND SHOULD NOT BE REPEATED OUTSIDE THE COURTROOM.

11

12

13

14

I'LL ASK COUNSEL TO STATE THEIR APPEARANCES.

15

MR. FINKELSTEIN: GOOD MORNING, YOUR HONOR.

16

JULIUS FINKELSTEIN, SUPERVISING DEPUTY DISTRICT ATTORNEY,
Page 124

17 APPEARING FOR THE PEOPLE OF THE STATE OF CALIFORNIA.
18 WITH ME THIS MORNING ARE ASSISTANT DISTRICT
19 ATTORNEY DAVID TOMKINS AND DEPUTY DISTRICT ATTORNEY JAMES
20 GIBBONS-SHAPIRO.

21 AND JUST A POINT OF ORDER CONSISTENT WITH THE
22 COURT'S ORDER ABOUT SEALING THE RECORD HERE, I'M WONDERING
23 WHETHER IT WOULD BE APPROPRIATE TO CLOSE THE COURTROOM AS
24 WELL, EXCLUDING ANYONE BUT COUNSEL FOR THE SUBPOENAED
25 PARTIES.

26 MR. GOODMAN: I WOULD JOIN IN THAT.

27 MR. CASSMAN: I WOULD JOIN THAT, YOUR HONOR.

28 THE COURT: THE COURT WILL MAKE THAT ORDER.

SUE HERFURTH, CSR #9645

1130

1 MR. FINKELSTEIN: ONE OTHER PARTY, MR. BAKER, IS
2 PRESENT, AND I JUST WANT TO BRING THAT TO THE COURT'S
3 ATTENTION.

4 THE ORDER PREVIOUSLY SIGNED BY THE COURT
5 RESTRICTED ACCESS TO THE INFORMATION TO COUNSEL FOR THE
6 SUBPOENAED PARTIES, AND THERE MAY BE SOME AMBIGUITY AS TO
7 WHETHER OR NOT MR. BAKER, WHO IS COUNSEL FOR NORCAL BUT NOT
8 ON THIS PROCEEDING, IS IN FACT COUNSEL FOR SUBPOENAED
9 PARTIES. I'LL LEAVE THAT UP TO THE COURT'S JUDGMENT.

10 THE COURT: THE COURT WILL ALLOW MR. BAKER TO BE
11 HERE.

12 MR. CASSMAN: TED CASSMAN, YOUR HONOR, WITH CRIS
13 ARGUEDAS, APPEARING ON BEHALF OF HOWARD RICE.

14 MR. GOODMAN: WILLIAM GOODMAN APPEARING FOR

15 NORCAL.

16 MS. ARGUEDAS: GOOD MORNING, YOUR HONOR.

17 MR. NI ERLI CH: CHARLES NI ERLI CH OF GIBSON, DUNN,
18 CRUTCHER, LLP, FOR KPMG.

19 THE COURT: THANK YOU. THIS MATTER COMES BEFORE
20 THE COURT THIS MORNING ON A REQUEST BY THE DI STRI CT ATTORNEY
21 FOR AN ORDER REQUI RING COMPLIANCE WITH THE SUBPOENA ISSUED
22 BY OR ON BEHALF OF THE GRAND JURY.

23 THERE ARE FOUR DOCUMENTS, AS I UNDERSTAND IT,
24 INVOLVED IN THIS REQUEST, AS STATED ON PAGE THREE OF THE
25 DI STRI CT ATTORNEY' S REQUEST.

26 IT' S ALSO BEFORE THE COURT ON A REQUEST BY COUNSEL
27 FOR HOWARD RICE AS WELL AS NORCAL THAT ONE PARTI CULAR
28 DOCUMENT BE ORDERED PROTECTED BY THE COURT AND ORDERED

SUE HERFURTH, CSR #9645

1131

1 RETURNED TO HOWARD RICE.

2 I HAVE READ ALL OF THE PAPERS PROBABLY THREE OR
3 FOUR TIMES IN ORDER TO BECOME FAMI LIAR WITH THE MOTI ON --
4 MOTI ONS, I SHOULD SAY.

5 I THINK I AM FAMI LIAR WITH THE MOTI ONS, AND I' M
6 GOI NG TO ENCOURAGE COUNSEL NOT TO SPEND TIME REPEATING WHAT
7 THEY HAVE IN THE DOCUMENTS. I WILL HAVE SOME QUESTI ONS. I
8 WANT TO GIVE EACH SI DE OR EACH COUNSEL REPRESENTI NG A
9 DI FFERENT PARTY AN OPPORTUNI TY TO BE HEARD. I PREFER THAT
10 I F YOU HAVE SOME NEW OR ADDI TI ONAL MATERI AL NOT CONTAI NED I N
11 THE PAPERS THAT YOU DI SCUSS THAT, OTHERWISE I' LL ASK THAT
12 YOU ONLY SPEND A MI NUTE OR SO WI TH RESPECT TO YOUR

13 PRESENTATION.

14 THE DISTRICT ATTORNEY FILED THE PAPERS FIRST.

15 I'LL LET YOU GO FIRST, MR. FINKELSTEIN.

16 MR. CASSMAN: YOUR HONOR, BEFORE WE BEGIN, I WOULD
17 NOTE THERE IS ALSO PENDING A MOTION TO STRIKE PORTIONS OF
18 THE DECLARATION OF MR. FINKELSTEIN.

19 THE COURT: THE COURT IS AWARE OF THAT MOTION.

20 THERE'S ALSO A MOTION FOR THE COURT TO TAKE
21 JUDICIAL NOTICE OF THE GRAND JURY REPORT, AND I'M AWARE OF
22 THAT, AND I'LL TAKE THAT UP IN DUE COURSE.

23 MR. FINKELSTEIN: THANK YOU, YOUR HONOR. I ONLY
24 INTEND TO AMPLIFY SOME POINTS PREVIOUSLY ADDRESSED IN OUR
25 MOVING PAPERS BECAUSE IN PART A REPLY BRIEF WAS FILED
26 YESTERDAY AFTERNOON, AND I DIDN'T REALIZE THAT WE WERE GOING
27 TO BE FILING REPLIES; MY UNDERSTANDING WAS THAT WE WOULD
28 NOT. BUT IN ANY EVENT, WE'RE PREPARED TO GO FORWARD TODAY,

SUE HERFURTH, CSR #9645

1132

1 AND I WANT TO AMPLIFY AND EXPLAIN FURTHER THE PEOPLE'S
2 ARGUMENT ON THE CRIME FRAUD EXCEPTION.

3 ON OCTOBER 6, 2000, THE FRIDAY BEFORE THE FIRST
4 SAN JOSE CITY COUNCIL VOTE ON THE NORCAL PROPOSAL, THERE WAS
5 A MEETING BETWEEN THE NORCAL CEO AND THE MAYOR OF SAN JOSE.
6 ACCORDING TO THE THOMPSON MEMO, THE NOVEMBER 18, 2003 MEMO,
7 AT THAT OCTOBER 6, 2000 MEETING, THE MAYOR TOLD NORCAL THAT
8 NORCAL WOULD RECEIVE A CONTRACT AND EXTRA COMPENSATION FROM
9 THE CITY IN EXCHANGE FOR NORCAL GETTING NORCAL'S
10 SUBCONTRACTOR, CWS, TO BREACH ITS EXISTING COLLECTIVE

11 BARGAINING AGREEMENT WITH THE ILWU, SOMETIMES REFERRED TO AS
12 THE LONGSHOREMEN, AND INSTEAD USE TEAMSTERS AT CWS' S
13 SAN JOSE RECYCLING PLANT.

14 NOW, IN TESTIMONY BEFORE THE GRAND JURY, NORCAL' S
15 CEO GAVE A SOMEWHAT DIFFERENT BUT STILL ILLEGAL VERSION OF
16 THAT MEETING. THIS WAS AN EXPLICIT QUID PRO QUO BETWEEN
17 NORCAL AND THE MAYOR' S OFFICE, AND IT WAS AN OFFER BY THE
18 MAYOR TO RECEIVE A BRIBE.

19 I WOULD LIKE TO CONCENTRATE ON THAT ARGUMENT
20 BECAUSE THAT ARGUMENT, IF WE PREVAIL ON THAT ARGUMENT, IT' S
21 DISPOSITIVE OF ALL THESE ISSUES.

22 GETTING CWS TO BREACH ITS EXISTING COLLECTIVE
23 BARGAINING AGREEMENT WITH THE ILWU WAS A THING OF VALUE.

24 THE MAYOR' S SUPPORT FOR THE AWARD OF A CONTRACT TO
25 NORCAL AND THE PAYMENT OF EXTRA COMPENSATION BY THE CITY TO
26 NORCAL WOULD BE AN OFFICIAL ACT, JUDGMENT OR OPINION ON THE
27 PART OF THE MAYOR. UNDER PEOPLE VS. DIEDRICH, THE THING OF
28 VALUE DOES NOT HAVE TO GO DIRECTLY TO THE PUBLIC OFFICIAL.

SUE HERFURTH, CSR #9645

1133

1 IN DIEDRICH, WHICH IS FROM THE CALIFORNIA SUPREME
2 COURT, THERE WERE TWO TRANSACTIONS UPON WHICH THE JURY COULD
3 HAVE PREDICATED GUILT. THE CASE WAS REVERSED BECAUSE THE
4 PROSECUTION DIDN' T OFFER A UNANIMITY INSTRUCTION. AS A
5 DIRECT PREDICATE FOR THAT HOLDING, THE COURT HAD TO DECIDE
6 WHETHER EACH OF TWO DIFFERENT TRANSACTIONS COULD HAVE FORMED
7 THE BASIS OF A BRIBERY. ONE OF THOSE TRANSACTIONS IS
8 DIRECTLY ON POINT.

9 IN ONE TRANSACTION, A FRIEND OF AN ELECTED COUNTY
10 SUPERVISOR IN FRONT OF THAT SUPERVISOR TOLD THE LANDOWNER
11 THAT THE SUPERVISOR WOULD GET THE LANDOWNER A NEEDED ZONING
12 CHANGE IF THE LANDOWNER AGREED TO BUY THE FRIEND'S PROPERTY.
13 NOT THE SUPERVISOR'S, BUT THE FRIEND'S PROPERTY, AT \$150,000
14 ABOVE MARKET. SO THERE WE HAVE A THING OF VALUE, PURCHASING
15 A FRIEND'S PROPERTY AT \$150,000 ABOVE MARKET, NOT GOING TO
16 THE ELECTED OFFICIAL, THE SUPERVISOR, BUT GOING TO THE
17 FRIEND.

18 THAT'S EXACTLY THE SITUATION WE HAVE HERE, AND
19 BOTH CALJIC AND CALCRIM JURY INSTRUCTIONS IN THE DEFINITION
20 OF BRIBE INCLUDE THE WORDS "OR SOMEONE ELSE."

21 SO I THINK IT'S QUITE CLEAR, CONTRARY TO THE
22 SUBPOENAED PARTIES' ARGUMENTS, WHAT HAPPENED ON OCTOBER 6
23 WAS IN FACT A BRIBERY, AND THE MAYOR'S REQUEST WAS CORRUPT,
24 BECAUSE WHAT THE MAYOR ASKED NORCAL TO DO, NAMELY TO GET CWS
25 TO BREACH THE EXISTING COLLECTIVE BARGAINING AGREEMENT WITH
26 THE LONGSHOREMEN AND INSTEAD SWITCH OVER TO THE TEAMSTERS,
27 WAS A VIOLATION OF FEDERAL LABOR LAW. THAT'S WHAT BASICALLY
28 MADE THAT CORRUPT.

SUE HERFURTH, CSR #9645

1134

1 IN RESPONSE TO THAT, THE SUBPOENAED PARTIES HAVE
2 POINTED THE COURT TO THE PITTSBURGH SCHOOL DISTRICT CASE.
3 THAT'S NOT AT ALL APPLICABLE TO THESE FACTS, BECAUSE IN THAT
4 CASE THE THING OF VALUE ALLEGEDLY WAS THE SCHOOL DISTRICT
5 EMPLOYEES' AGREEMENT TO STOP LEAFLETING IN FRONT OF THE
6 SCHOOL BOARD MEMBERS' BUSINESSES. AND THE ARGUMENT WAS MADE

7 THAT THAT WAS TANTAMOUNT TO A BRIBE, BECAUSE STOPPING THE
8 LEAFLETING WOULD ENHANCE THE SALES AT THE SHOPS AND
9 THEREFORE WAS A THING OF VALUE. AND THE REASON IT'S NOT
10 APPLICABLE TO THIS CASE IS THE COURT CLEARLY SAID IT WAS NOT
11 CORRUPT BECAUSE THE SCHOOL DISTRICT EMPLOYEES HAD A FIRST
12 AMENDMENT RIGHT TO LEAFLETS.

13 HERE THERE WAS NO FIRST AMENDMENT OR ANY OTHER
14 RIGHT FOR THE MAYOR TO ASK NORCAL TO GET ITS SUBCONTRACTOR
15 TO BREACH THE COLLECTIVE BARGAINING AGREEMENT; IT WAS
16 ILLEGAL UNDER FEDERAL LAW.

17 NOW, ON THE FOLLOWING MONDAY, OCTOBER 9, AFTER THE
18 MEETING WITH THE MAYOR, NORCAL ENTERED INTO AN AGREEMENT
19 WITH THE SUBCONTRACTOR, CWS, WHEREBY NORCAL OBLIGATED ITSELF
20 TO PAY CWS FOR THE EXTRA COST OF USING THE TEAMSTERS.

21 NORCAL RECORDED THAT OBLIGATION AS AN EXPENSE ON
22 ITS FINANCIAL STATEMENT AND RECORDED THE MAYOR'S PROMISE OF
23 EXTRA COMPENSATION AS REVENUE.

24 THE PROBLEM WITH THAT IS, AND HERE'S WHERE I THINK
25 WE EXPLAIN THAT IN MORE DETAIL, OUR ARGUMENT. A CONTRACT TO
26 DO AN ILLEGAL ACT IS VOID, AND IT'S VOID BECAUSE THE
27 CONSIDERATION FOR THAT CONTRACT IS ILLEGAL; THEREFORE, IT
28 CANNOT BE ENFORCED, REGARDLESS OF HOW THE CITY COUNCIL

SUE HERFURTH, CSR #9645

1135

1 VOTES. WHETHER THEY VOTED KNOWING THEY WERE ENFORCING AN
2 ILLEGAL ACT OR UNKNOWING, IT'S A VOID ACT. AND BECAUSE IT'S
3 A VOID ACT, EVEN IF THEY SOMEHOW VOTED TO PAY THIS AND THE
4 MONEY GETS PAID, WHEN THE TRUTH COMES OUT, THAT MONEY IS

5 SUBJECT TO BEING CALLED BACK FROM NORCAL, SO IT CAN'T BE
6 TREATED AS A COLLECTABLE RECEIVABLE.

7 NOW, BECAUSE OF THAT, REGARDING THE MAYOR'S
8 PROMISE TO PAY NORCAL THE EXTRA COMPENSATION IN EXCHANGE FOR
9 THE ILLEGAL ACT, THE ILLEGAL ACT HERE BEING THE BRIBE, WAS
10 FRAUDULENT. AND THE REASON IT WAS FRAUDULENT IS BECAUSE THE
11 EXTRA INCOME WAS IN EXCHANGE FOR THE ILLEGAL ACT, AND IT
12 COULD NOT BE ENFORCED EVEN WITHOUT THE CITY COUNCIL'S
13 APPROVAL.

14 LET ME GIVE AN ANALOGY. IF, INSTEAD OF A BRIBE,
15 THE MAYOR HAD SAID TO NORCAL, CWS, I WOULD LIKE YOU TO
16 FURNISH ME WITH A POUND OF COCAINE, AND IF YOU DO THAT, I
17 WILL GET THE CITY TO PAY YOU EXTRA COMPENSATION ON YOUR
18 CONTRACT.

19 THERE WE HAVE A DIFFERENT KIND OF AN ILLEGAL ACT,
20 FURNISHING ILLEGAL DRUGS. THAT PROMISE BY THE MAYOR, EVEN
21 IF RATIFIED BY THE CITY COUNCIL, WOULD NOT BE PROPERLY
22 RECORDABLE AS REVENUE FROM THE CITY OF SAN JOSE, BECAUSE THE
23 CONSIDERATION FOR THAT EXTRA MONEY WAS AN ILLEGAL ACT.

24 AND WHEN NORCAL'S AUDITORS, KPMG, SPOTTED THIS
25 ISSUE, NOT KNOWING THAT IT WAS AN ILLEGAL ACT, THEY HAD
26 COMMUNICATION WITH NORCAL ABOUT THE BASIS FOR TREATING THIS
27 EXPECTED MONEY FROM THE CITY AS A RECEIVABLE.

28 AND IF YOU LOOK AT THE AUDIT PAPERS WHICH HAVE

SUE HERFURTH, CSR #9645

1136

1 BEEN ATTACHED AS EXHIBITS TO OUR DECLARATION AND THE
2 SUBPOENAED PARTIES' DECLARATION, THE ENTIRE DISCUSSION BY
Page 131

3 THE AUDITOR CENTERS ON THE LIKELIHOOD THAT THE COUNCIL WILL
4 VOTE TO APPROVE THIS PAYMENT. THERE'S ABSOLUTELY NO
5 DISCUSSION ABOUT WHETHER OR NOT THE TRANSACTION, WHICH WAS
6 THE CONSIDERATION FOR THIS PAYMENT, WAS ILLEGAL. AND FROM
7 THAT AN INFERENCE CAN BE DRAWN THAT NORCAL WITHHELD FROM ITS
8 AUDITORS THE ILLEGAL NATURE OF THE CONSIDERATION UPON WHICH
9 THIS EXTRA MONEY WAS PROMISED, AND THAT'S THE FRAUD IN THIS
10 CASE.

11 NOW, THERE'S BEEN SOME OTHER DISCUSSION THAT WE
12 DON'T KNOW EXACTLY WHAT'S IN THE LETTERS, THE TWO LETTERS
13 FROM MICHAEL BAKER AND MICHAEL SANGIACOMO, FROM NORCAL'S
14 ATTORNEY TO ITS CEO, BUT THAT'S NOT EXACTLY TRUE. WE HAVE
15 SOME IDEA FROM WHICH AN INFERENCE CAN BE DRAWN AS TO WHAT'S
16 IN THE LETTERS.

17 THE LETTERS, ACCORDING TO KPMG, THAT'S THE RECORD
18 BEFORE YOU, WERE RESPONSIVE TO A SUBPOENA REQUEST WHICH ASKS
19 FOR ALL DOCUMENTS CONCERNING ANY COMMUNICATIONS BETWEEN
20 NORCAL AND KPMG PERTAINING TO REIMBURSEMENTS FROM THE CITY
21 OF SAN JOSE TO NORCAL FOR THE EXTRA COST OF USING TEAMSTERS
22 INSTEAD OF ILWU WORKERS. SO WE KNOW IT'S RESPONSIVE TO THAT
23 REQUEST.

24 WE ALSO KNOW THAT THE FIRST OF THOSE LETTERS, THE
25 DECEMBER 13 LETTER, 2003, WAS BUT THREE WEEKS AFTER THE
26 THOMPSON MEMO TO MR. BAKER WHICH DISCLOSED THE ILLEGAL
27 NATURE OF THE CONSIDERATION FOR THIS EXTRA MONEY. AND WE
28 ALSO KNOW THAT THERE IS NO DISCUSSION IN THE AUDIT PAPERS

SUE HERFURTH, CSR #9645

1 ABOUT WHETHER THE CONSIDERATION FOR THIS EXTRA MONEY WAS
2 ILLEGAL WHICH, OBVIOUSLY, KPMG WOULD HAVE DONE HAD THIS
3 ISSUE BEEN BROUGHT TO THEIR ATTENTION, AND KPMG HAD THE
4 RIGHT TO RELY ON INFORMATION SUPPLIED BY ITS CLIENT IN
5 PERFORMING THE AUDIT. AND THAT'S ALL THAT'S REQUIRED FOR
6 THE CRIME FRAUD EXCEPTION, AS BP ALASKA TEACHES US, IN ORDER
7 TO MAKE OUT IN A CRIME FRAUD EXCEPTION YOU DON'T HAVE TO
8 HAVE ALL THE ELEMENTS OF A CIVIL FRAUD ACTION, YOU JUST HAVE
9 TO HAVE THE RIGHT TO RELY, AND WE HAVE THAT PRESENT HERE.

10 AND THE FACT THAT THERE'S NO DISCUSSION ABOUT WHAT
11 IS THE KEY ISSUE FOR THE AUDITORS, THE COLLECTABILITY OF
12 THIS REVENUE FROM WHAT'S CLAIMED TO BE REVENUE FROM THE
13 CITY. THE FACT THAT THERE IS NO DISCUSSION ABOUT WHETHER OR
14 NOT THE CONSIDERATION FOR THIS WAS AN ILLEGAL BRIBE SHOWS
15 THAT THOSE FACTS WERE CONCEALED IN THE DOCUMENTS AND
16 COMMUNICATIONS THAT NORCAL AND ITS COUNSEL MAY HAVE HAD WITH
17 KPMG. THAT'S THE PRIMA FACIE CASE OF FRAUD.

18 NOW, THE SUBPOENAED PARTIES WANT TO POINT THE
19 COURT IN A DIFFERENT DIRECTION. THEY WANT TO MAKE OUT THE
20 DECISION ON COLLECTABILITY AND THE DECISION ON WHETHER IT'S
21 PROPERLY TREATED AS REVENUE HINGING ON WHETHER IT WAS LIKELY
22 THAT THE COUNCIL WOULD VOTE TO APPROVE IT. IT DOESN'T
23 DEPEND ON WHETHER THE COUNCIL VOTED TO APPROVE IT OR NOT.
24 IF IT WAS GIVEN OR PROMISED IN CONSIDERATION FOR AN ILLEGAL
25 ACT, THE COUNCIL CAN'T RATIFY THAT ACT. THEY CAN'T APPROVE
26 MONEY, CANNOT DISBURSE PUBLIC FUNDS WHEN THE CONSIDERATION
27 FOR THAT DISBURSEMENT IS AN ILLEGAL ACT.

28 SO THAT'S OUR THEORY IN A LITTLE MORE DETAIL ABOUT

1 THE CRIME FRAUD. AND I WANT TO REMIND THE COURT, ONLY PRIMA
2 FACIE EVIDENCE NEED BE SHOWN, AND PRIMA FACIE EVIDENCE IS
3 SOME EVIDENCE FROM WHICH AN INFERENCE CAN BE DRAWN. IT'S A
4 VERY LOW STANDARD, PROBABLY THE LOWEST STANDARD.

5 THE DEFENSE HAS RESPONDED BY LANGUAGE, UNTIL THE
6 CONTRARY IS SHOWN, AND WE BELIEVE THEY HAVE CONFUSED THE
7 CONCEPT OF PRIMA FACIE EVIDENCE AS A STANDARD OF PROOF
8 VERSUS PRIMA FACIE EVIDENCE TO TRIGGER A PRESUMPTION.

9 FOR EXAMPLE, THERE IS A PRESUMPTION IN THE LAW IN
10 A PROSECUTION FOR FAILURE TO FILE A TAX RETURN, THAT THE
11 CERTIFICATE OF THE FRANCHISE FAX BOARD IS PRIMA FACIE
12 EVIDENCE THAT NO RETURN WAS FILED. WELL, THE USE OF THE
13 TERM PRIMA FACIE IN THAT CONTEXT IS ONLY A PRESUMPTION,
14 WHICH DISAPPEARS WHEN THERE'S SOME EVIDENCE OF THE CONTRARY
15 SHOWN.

16 HERE WE'RE NOT TALKING ABOUT A PRESUMPTION, WE'RE
17 TALKING ABOUT A STANDARD OF PROOF, AND THE STANDARD OF PROOF
18 IS SOME EVIDENCE THAT THE SERVICES OF HOWARD RICE WERE USED
19 TO COMMIT SOME KIND OF FRAUD. IT DOESN'T MATTER THAT
20 THERE'S CONTRARY EVIDENCE, IT DOESN'T MATTER THAT THE FRAUD
21 WAS NOT SUCCESSFUL. AND ON THIS RECORD WE BELIEVE VERY
22 STRONGLY THAT WE HAVE MET THAT VERY LOW BURDEN OF PRIMA
23 FACIE EVIDENCE.

24 NOW, IF THE COURT AGREES AND FINDS THAT THERE IS
25 PRIMA FACIE EVIDENCE, NOT EVEN PROBABLE CAUSE BUT JUST PRIMA
26 FACIE EVIDENCE, THEN THERE IS NO ATTORNEY-CLIENT PRIVILEGE
27 AS TO THAT THOMPSON DOCUMENT.

28 AND AS TO THE WORK PRODUCT CLAIM AS TO THE

1 THOMPSON DOCUMENT, I THINK I'M ASSUMING THE COURT HAS
2 REVIEWED THAT DOCUMENT AND HAS SEEN THAT THE MAJORITY OF THE
3 PARAGRAPHS ARE SIMPLY STATEMENTS OF FACT BASED ON STATEMENTS
4 OF FACT COMMUNICATED TO MR. THOMPSON EITHER BY WITNESSES OR
5 BY LAWYERS.

6 SO IF THE COURT FINDS THAT THE CLIENT, NORCAL, WAS
7 USING THE SERVICES OF HOWARD RICE TO PERPETRATE A FRAUD,
8 THAT MAKES THE ATTORNEY-CLIENT PRIVILEGE NOT VALID, AND THAT
9 TAKES CARE OF THAT ISSUE AS TO THE THOMPSON MEMO. AND IF
10 THE COURT IS UNABLE TO CONCLUDE THAT THERE IS PRIMA FACIE
11 EVIDENCE THAT HOWARD RICE WAS A WILLING PARTICIPANT IN THE
12 FRAUD, AND I KNOW DESPITE THE EVIDENCE AND RECORD WE THINK
13 IS SUFFICIENT, I KNOW IT'S A HARD THING TO ASK ANY COURT TO
14 FIND A PROMINENT FIRM LIKE HOWARD RICE WAS A WILLING
15 PARTICIPANT, EVEN WITH THIS LOWER STANDARD OF PRIMA FACIE,
16 THEN THE DOCUMENT IS STILL DISCOVERABLE AND THE COURT SHOULD
17 FOLLOW THE ROLAND (PHONETIC) PROCEDURE AND EXERCISE OR
18 REDACT THOSE LINE PORTIONS OF THE MEMO THAT HAVE IMPRESSIONS
19 AND OPINIONS. AND THE REST OF THE DOCUMENT, PARTICULARLY
20 THE KEY PARAGRAPH, IS CRUCIAL EVIDENCE OF WHAT HAPPENED ON
21 OCTOBER 6TH BETWEEN NORCAL AND THE MAYOR, AND SHOULD BE
22 DISCOVERABLE AND PRODUCIBLE AND FULLY USABLE IN THIS
23 PROCEEDING.

24 SO THE OTHER THING I WANT TO ADDRESS VERY BRIEFLY
25 IS THE WAIVER ARGUMENT. I WANT TO REMIND THE COURT THAT
26 WHEN IT COMES TO ATTORNEY-CLIENT PRIVILEGE, THERE ARE TWO
27 SEPARATE AND DISTINCT WAYS IN WHICH THE PRIVILEGE CAN BE

28 LOST. ONE IS CONSENT TO THE DISCLOSURE BY A THIRD PARTY.

SUE HERFURTH, CSR #9645

1140

1 THAT MANNER OF LOSING THE PRIVILEGE APPLIES TO THE
2 DISCLOSURE OF THE THOMPSON MEMO. BUT WHEN MR. SANGIACOMO,
3 NORCAL'S CEO, TESTIFIED WITHOUT COERCION ON THE SAME
4 COMMUNICATION, IT WAS LOST THROUGH THE UNCOERCED DISCLOSURE
5 IRRESPECTIVE OF WHETHER NORCAL CONSENTED TO THE DISCLOSURE
6 BY HOWARD RICE ON THE COMMUNICATION.

7 SO THERE'S TWO SEPARATE WAYS TO LOSE IT, AND THERE
8 IS NO REQUIREMENT THAT THE PRIVILEGE HOLDER BE ADVISED OF
9 ANY RIGHTS OR PRIVILEGES.

10 FOR EXAMPLE, IF MICHAEL SANGIACOMO, NORCAL'S CEO,
11 WAS HAVING LUNCH AT A RESTAURANT AND MET AN OLD BUSINESS
12 SCHOOL ACQUAINTANCE OF HIS AND TOLD HIM ABOUT A
13 COMMUNICATION WITHOUT ADVICE OF RIGHT OR ADVICE OF
14 PRIVILEGE, THAT WOULD BE A WAIVER OF THAT PRIVILEGE FOR THAT
15 COMMUNICATION UNDER 912, SECTION 912(A) OF THE EVIDENCE CODE
16 THERE IS NO REQUIREMENT THAT THERE BE ANY ADVICE OF RIGHTS
17 OR OF ANY PRIVILEGES.

18 THE OTHER THING IS NORCAL'S CEO HAD COUNSEL
19 OUTSIDE THE GRAND JURY ROOM, AND WHEN HE SAW THE MEMO
20 LABELED AS IT WAS, CONFIDENTIAL MEMORANDUM, ATTORNEY WORK
21 PRODUCT, HE HAD EVERY RIGHT TO, BEFORE ANSWERING QUESTIONS
22 ABOUT THAT COMMUNICATION, STEP OUTSIDE THE JURY ROOM AND
23 CONSULT WITH COUNSEL AS HE DID ON ANOTHER OCCASION IN THE
24 RECORD BEFORE YOU WITH THE BRASLAW MEMO.

25 THAT'S EXACTLY WHAT HE DID WITH THE BRASLAW MEMO,

26 AND HE COULD HAVE DONE THAT WITH THE OTHER MEMO IF HE HAD
27 ANY DOUBT ABOUT WHETHER HE SHOULD ANSWER THAT QUESTION. HE
28 DIDN'T, AND WHEN HE DIDN'T, HE WAIVED THAT PRIVILEGE, AT

SUE HERFURTH, CSR #9645

1141

1 LEAST AS TO THAT PARAGRAPH.

2 THE COURT: YOU'RE TELLING ME THINGS I KNOW FROM
3 YOUR PAPERS AT THIS POINT.

4 MR. FINKELSTEIN: OKAY. THE LAST POINT I WANT TO
5 MAKE, YOUR HONOR -- SORRY I BELABORED THE POINT. THE LAST
6 POINT I WANT TO MAKE IS THE BILL JONES MEMO, WHICH IS AN
7 ATTACHMENT TO THE THOMPSON MEMO AND WHICH WAS WITHHELD FROM
8 THE PRODUCTION IN RESPONSE TO SUBPOENA, THERE IS NO
9 ASSERTION THAT THAT WAS ATTORNEY-CLIENT COMMUNICATION, NOR
10 COULD THERE BE BECAUSE MR. JONES WAS NO LONGER EMPLOYED BY
11 NORCAL AT THE TIME OF THE COMMUNICATION.

12 THE ONLY ASSERTION AS TO THAT IS WORK PRODUCT.
13 THE SUBPOENAED PARTIES HAVE OFFERED IN THEIR PAPERS TO ALLOW
14 THE COURT TO LOOK AT ANY OF THE WITHHELD DOCUMENTS. I WOULD
15 URGE THE COURT TO TAKE THE SUBPOENAED PARTIES UP ON THEIR
16 OFFER, LOOK AT IT AND PARSE OUT FACTS FROM OPINIONS AND
17 IMPRESSIONS AND ORDER THE NONWORK PRODUCT PORTION OF THE
18 MEMO BE TURNED OVER TO THE DISTRICT ATTORNEY.

19 THANK YOU.

20 THE COURT: LET ME ASK YOU A COUPLE OF QUESTIONS,
21 THEN I'LL GIVE COUNSEL AN OPPORTUNITY TO RESPOND.

22 I UNDERSTAND THAT THERE WAS A RELATIONSHIP BETWEEN
23 CWS AND ILWU, BUT I ALSO HAVE BEEN LED TO UNDERSTAND THAT

24 CWS WAS BEING REQUIRED TO SET UP A NEW PLANT OR A NEW
25 OPERATION FOR THE SAN JOSE CONTRACT.

26 MR. FINKELSTEIN: RIGHT.

27 THE COURT: WHAT EVIDENCE IS THERE THAT CWS
28 COULDN'T, IN THE PROCESS OF DOING THAT, ESTABLISH A

SUE HERFURTH, CSR #9645

1142

1 RELATIONSHIP WITH ANY UNION TO OPERATE THAT PLANT?

2 MR. FINKELSTEIN: BECAUSE CWS, AND I DON'T
3 REMEMBER IF WE INCLUDED THAT EXHIBIT OR NOT, WE CAN FURNISH
4 THAT TO THE COURT IF THE COURT WANTS IT. CWS SIGNED AN
5 AGREEMENT WITH THE ILWU IN CONNECTION WITH THIS OPERATION IN
6 OAKLAND WHICH WAS A PART OF ITS COLLECTIVE BARGAINING
7 AGREEMENT AND WHICH WAS BOTH TESTIFIED TO BY CWS'S
8 PRESIDENT, AND WE HAVE THE AGREEMENT AS WELL.

9 MR. CASSMAN: YOUR HONOR, OBJECT TO THE DISTRICT
10 ATTORNEY RESPONDING TO THE COURT WITH DOCUMENTS AND EVIDENCE
11 THAT ARE NOT BEFORE THE COURT AND AVAILABLE TO US.

12 THE COURT: I UNDERSTAND THE OBJECTION. I'LL
13 CONSIDER IT IN DUE COURSE.

14 MR. FINKELSTEIN: OKAY. THAT SAID, IN THE EVENT
15 THAT CWS EXPANDED ITS OPERATION OUTSIDE OF OAKLAND WITHIN
16 THE TERRITORY OF ILWU LOCAL 6, THE COLLECTIVE BARGAINING
17 AGREEMENT THEN IN EXISTENCE WOULD APPLY TO THE NEW OPERATION
18 AS WELL. IT'S CALLED AN EXPANSION AGREEMENT. THAT'S WHAT
19 BOUND ILWU TO USE -- STRIKE THAT. THAT'S WHAT BOUND CWS TO
20 USE ILWU.

21 THE COURT: THAT'S WHAT LEADS YOU TO THE

22 CONCLUSION THAT AGREEING TO THE MAYOR'S REQUEST WOULD BE A
23 BREACH OF THAT AGREEMENT WITH ILWU.

24 MR. FINKELSTEIN: RIGHT. THAT AND OTHER
25 FACTORS.

26 THE COURT: ALL RIGHT.

27 MR. FINKELSTEIN: UNDER THE FEDERAL LABOR LAW, AS
28 I UNDERSTAND IT AND AS CONCLUDED BY THE CITY ATTORNEY'S

SUE HERFURTH, CSR #9645

1143

1 OFFICE, REPRESENTATION OF THE EMPLOYEES IS NOT A MATTER THAT
2 THE CITY CAN GET INVOLVED IN. THAT WOULD BE ILLEGAL UNDER
3 FEDERAL LABOR LAW. IT'S UP TO THE EMPLOYEES AND EMPLOYER TO
4 DECIDE WHICH UNION IS RECOGNIZED.

5 THE CITY HAS NO RIGHT -- IN FACT, IT'S A VIOLATION
6 OF FEDERAL LABOR LAW FOR THE CITY TO GIVE A PREFERENCE TO
7 ONE UNION OR ANOTHER.

8 THE COURT: IN YOUR VIEW, DOES NORCAL IN THIS CASE
9 HAVE TO HAVE KNOWLEDGE THAT CWS WOULD BE BREAKING THE LAW OR
10 ACTING ILLEGALLY WITH RESPECT TO ILWU IN SIGNING WITH THE
11 TEAMSTERS?

12 MR. FINKELSTEIN: WELL --

13 THE COURT: AND IF SO, WHAT IS THE EVIDENCE THAT
14 IT HAD --

15 MR. FINKELSTEIN: IN ITS PROPOSAL TO THE CITY,
16 WHICH I GUESS THE COURT CAN TAKE JUDICIAL NOTICE OF, IT'S A
17 LARGE DOCUMENT I DIDN'T WANT TO INCLUDE. IF WE CAN REQUEST
18 THE COURT TO TAKE JUDICIAL NOTICE, IT'S A PUBLIC DOCUMENT
19 FILED WITH THE CITY. IT TOLD THE CITY IN ITS PROPOSAL THAT

20 CWS WOULD BE USING ILWU WORKERS IN SAN JOSE PURSUANT TO AN
21 EXISTING COLLECTIVE BARGAINING AGREEMENT. THAT'S NORCAL'S
22 OWN PROPOSAL, THAT'S IN THERE.

23 THE COURT: DOES IT ALSO CONTAIN THE INFORMATION
24 OR REPRESENTATIONS THAT TO USE SOMEONE ELSE WOULD BE A
25 BREACH OF THAT AGREEMENT?

26 MR. FINKELSTEIN: NO, IT DOESN'T SAY THAT. BUT IT
27 DOESN'T HAVE -- BECAUSE NORCAL BEFORE OCTOBER 6 WAS PLANNING
28 ON USING, HAVING CWS USE THE ILWU WORKERS. IT WAS A COST

SUE HERFURTH, CSR #9645

1144

1 SAVING ASPECT OF THE PROPOSAL; IT'S WHAT ALLOWED NORCAL TO
2 BE BY FAR THE LOWEST BIDDER. IF THEY HAD USED TEAMSTERS AT
3 CWS, BECAUSE OF THE DIFFERENTIAL BETWEEN ILWU AND THE
4 TEAMSTERS, NORCAL'S BID WOULD HAVE BEEN, AS WE KNOW NOW, \$11
5 MILLION HIGHER.

6 THE COURT: I'M ALSO CURIOUS TO HEAR YOUR VIEW
7 ABOUT PRIMA FACIE EVIDENCE AND WHAT THAT IS.

8 MR. FINKELSTEIN: OKAY.

9 THE COURT: I TAKE IT THAT IT'S MORE THAN PROBABLE
10 CAUSE.

11 MR. FINKELSTEIN: NO. NO, YOUR HONOR, LESS THAN
12 PROBABLE CAUSE. PROBABLE CAUSE IS A STRONG SUSPICION.
13 PRIMA FACIE EVIDENCE, I BELIEVE THE LOWEST STANDARD OF
14 PROOF, AND UNDER THE BP ALASKA CASE IT'S DEFINED AS SOME
15 EVIDENCE FROM WHICH AN INFERENCE CAN BE DRAWN.

16 AND I KNOW, WHEN I FIRST LOOKED AT THAT, I HAVE TO
17 CONFESS, I WAS SURPRISED MYSELF. I SAID, BOY, THAT'S A VERY

18 LOW SHOWING, BUT THEN I REALIZED THE ATTORNEY-CLIENT
19 PRIVILEGE IS CREATED BY STATUTE, IT'S NOT CONSTITUTIONALLY
20 BASED. AND THE CASES ARE REplete AND INDICATE THAT THE
21 LEGISLATURE DEFINES THE CONTOURS OF PRIVILEGE, WHAT IT
22 APPLIES TO AND WHERE IT DOESN'T APPLY, AND WHAT'S A WAIVER
23 AND WHAT'S NOT A WAIVER. THE COURTS ARE NOT FREE TO TINKER
24 WITH THAT, AND THE LEGISLATURE, RIGHTLY OR WRONGLY, HAS PUT
25 A VERY LOW STANDARD FOR CRIME FOR FRAUD, AND I CAN CERTAINLY
26 SEE THE RATIONALIZATION FOR THAT.

27 LAWYERS SHOULD NOT AND CLIENTS SHOULD NOT BE ABLE
28 TO HIDE BEHIND A PRIVILEGE IN ORDER TO CONCEAL DOCUMENTS

SUE HERFURTH, CSR #9645

1145

1 USED IN PERPETRATING A FRAUD. IT DOES NOT SPEAK WELL OF OUR
2 PROFESSION TO ALLOW LAWYERS TO DO THAT.

3 SOME STATES TALK ABOUT THE PRIVILEGE BEING AN
4 OBSTACLE TO THE TRUTH. I'M NOT SURE CALIFORNIA HAS GONE
5 THAT FAR, BUT IT'S A VERY LOW STANDARD, AND IN OUR VIEW IT'S
6 LESS THAN PROBABLE CAUSE. SOME EVIDENCE, ACCORDING TO BP
7 ALASKA, FROM WHICH AN INFERENCE CAN BE DRAWN.

8 THE COURT: THERE WAS SOME DISCUSSION IN YOUR
9 PAPERS AND MAYBE IN YOUR ARGUMENT ALSO THIS MORNING THAT THE
10 CONSIDERATION OR QUID PRO QUO OF THE BRIBE WAS A BENEFIT TO
11 THE TEAMSTERS.

12 MR. FINKELSTEIN: RIGHT. THAT'S CORRECT.

13 THE COURT: WHICH ARGUABLY ALSO BENEFITED THE
14 MAYOR. IN THIS SCENARIO, DOES NORCAL HAVE TO KNOW OF THAT
15 NEXUS BETWEEN THE TEAMSTERS AND THE MAYOR TO KNOW THAT

16 THERE'S A BENEFIT TO THE MAYOR IN ORDER TO MAKE -- IN ORDER
17 TO GIVE NORCAL THE KNOWLEDGE OF THE ILLEGALITY OR FRAUD
18 ELEMENT OF THE TRANSACTION?

19 MR. FINKELSTEIN: NO. I DON'T THINK, STRICTLY
20 SPEAKING, NORCAL HAS TO KNOW THAT. BUT AGAIN, WE'RE NOT
21 TALKING ABOUT PROOF BEYOND A REASONABLE DOUBT OR EVEN
22 PROBABLE CAUSE. WE'RE TALKING ABOUT PRIMA FACIE EVIDENCE
23 THAT THIS TRANSACTION WAS AN ILLEGAL BRIBERY, AND SO WE
24 THINK THAT'S SUFFICIENT IN THIS CASE.

25 THE COURT: ALL RIGHT.

26 MR. FINKELSTEIN: BECAUSE -- I GUESS THAT'S THE
27 POINT, IT DOESN'T REALLY MATTER. IF NORCAL WERE ON TRIAL
28 FOR BRIBERY, THAT WOULD BE AN ISSUE IN THE CASE. THEY ARE

SUE HERFURTH, CSR #9645

1146

1 NOT.

2 THE QUESTION IS WHETHER OR NOT THEY CONCEALED FROM
3 THEIR AUDITORS SALIENT FACTS THAT THE AUDITORS HAD A RIGHT
4 TO RELY ON. AND THE BEST EVIDENCE OF THAT, YOUR HONOR,
5 WHICH SHOWS BOTH WHAT YOUR HONOR ASKED AND THIS OTHER POINT
6 I'M MAKING IS THAT IF NORCAL DIDN'T THINK IT WAS ILLEGAL
7 WHY, IN ITS MEMO TO THE AUDITORS, DID IT NOT COME OUT AND
8 SAY, WE MET WITH THE MAYOR BEFORE THE VOTE ON EACH OF THE
9 VOTES AND HE ASKED US TO DO THIS AND WE AGREED, AND THAT'S
10 THE MONEY WE'RE EXPECTING.

11 INSTEAD, THEY TRY TO MAKE IT SOUND LIKE SOMETHING
12 OTHER THAN WHAT IT WAS. INSTEAD OF SAYING THEY MET SECRETLY
13 WITH THE MAYOR ON THE EVE OF THE VOTE, THEY TOLD THE

14 AUDITORS THE CITY REQUIRED CWS TO SWITCH TO TEAMSTERS. AND
15 THEY TOLD THE AUDITORS, THE CITY HAS EXPRESSED AN INTENTION
16 TO REIMBURSE NORCAL IN THIS EXTRA COST. IF THEY DIDN'T
17 THINK IT WAS ILLEGAL, WHY DID THEY CHANGE THE LANGUAGE FROM
18 WHAT IT WAS TO SOMETHING LESS OBJECTIONABLE?

19 THE COURT: SOME PEOPLE THINK THE MAYOR REPRESENTS
20 THE CITY.

21 MR. FINKELSTEIN: NOT IN SAN JOSE'S FORM OF
22 GOVERNMENT. HE ONLY HAS THE POWER OF A SINGLE
23 COUNCILMEMBER; HE HAS NO AUTHORITY BY CHARTER TO NEGOTIATE
24 THE DEAL.

25 AND YOUR HONOR IS RIGHT, IF THIS WAS ANOTHER CITY
26 THAT HAD WHAT IS SOMETIMES CALLED THE STRONG MAYOR FORM OF
27 GOVERNMENT, THAT MIGHT BE OKAY. THAT BY CHARTER IS NOT SAN
28 JOSE'S FORM OF GOVERNMENT, AND NORCAL KNEW THAT BECAUSE THEY

SUE HERFURTH, CSR #9645

1147

1 DID TELL THE AUDITORS THAT IT WAS SUBJECT TO COUNCIL
2 APPROVAL, SO THEY COULD NOT HAVE THOUGHT THAT THE MAYOR'S
3 WORD ALONE OR PROMISE ALONE WAS SUFFICIENT.

4 THE COURT: ALL RIGHT. THANK YOU.

5 MR. CASSMAN?

6 MR. CASSMAN: YES, YOUR HONOR. THANK YOU.

7 BASED ON OUR PAPERS, THE PRESENTATIONS THE COURT
8 HAS HEARD, AND THE ARGUMENTS OF COUNSEL, I THINK IT'S QUITE
9 CLEAR THAT THE WORK PRODUCT DOCTRINE APPLIES TO THE
10 DOCUMENTS IN QUESTION AND THAT THERE WAS NO WAIVER ON THIS
11 RECORD.

12 SO UNLESS THE COURT HAS ANY QUESTIONS ABOUT THAT,
13 I JUST MOVE THAT THE RECORD BE ON THE CRIME FRAUD ISSUE
14 THAT'S BEEN PRESENTED THIS MORNING.

15 THE COURT: GO AHEAD. THAT DOESN'T MEAN I DON'T
16 HAVE ANY QUESTIONS, BUT GO AHEAD ANYWAY.

17 MR. CASSMAN: FIRST, YOUR HONOR, I WOULD NOTE THAT
18 IN RESPONDING TO THE COURT'S QUESTIONS, THE DISTRICT
19 ATTORNEY RELIED ON INFORMATION AND REPRESENTATIONS
20 CONCERNING FEDERAL LAW THAT ARE NOT BEFORE THE COURT, THAT
21 HAVE NOT BEEN PRESENTED IN ITS PAPERS; THEREFORE, I WOULD
22 BELIEVE IT'S AN INAPPROPRIATE ARGUMENT FOR COUNSEL TO MAKE
23 AT THIS TIME.

24 HE ALSO MADE SEVERAL FACTUAL ASSERTIONS NOT
25 SUPPORTED BY THE RECORD. THE COURT PICKED UP ON THE FIRST
26 ONE, THAT THERE WAS A BREACH OF THE ILWU CONTRACT. NOWHERE
27 IS THAT SUGGESTED IN THE PAPERS. THERE IS NO EVIDENCE THAT
28 IT OCCURRED OR THAT THE ILWU THOUGHT IT HAD OCCURRED AFTER

SUE HERFURTH, CSR #9645

1148

1 THE TEAMSTERS WERE RETAINED.

2 I SIMPLY SUBMIT TO THE EXTENT THERE IS ANY
3 INFERENCE TO BE DRAWN FROM EVIDENCE THAT'S BEFORE THE COURT,
4 IT WOULD BE THAT THERE WAS NO BREACH. BUT CERTAINLY THERE'S
5 NO INDICATION, FOR EXAMPLE, THAT THE MAYOR OF SAN JOSE
6 UNDERSTOOD THAT CWS WOULD BE BREACHING ANY CONTRACT THAT WAS
7 IN EFFECT AT THAT TIME IF IT WERE TO HIRE TEAMSTERS TO
8 PERFORM AT THESE NEW FACILITIES. SO I THINK THAT'S THE
9 FIRST POINT THAT'S CRUCIAL FOR UNDERSTANDING THIS.

10 THE SECOND IS THE DISTRICT ATTORNEY MADE A
11 REPRESENTATION THAT IT WAS THE DIFFERENCE IN WAGES BETWEEN
12 THE TEAMSTERS AND ILWU THAT PERMITTED NORCAL'S BID TO BE THE
13 LOWEST. THAT'S, FIRST OF ALL, NOT IN THE RECORD ANYWHERE.

14 AND SECOND OF ALL, IT'S NOT TRUE, IT'S SIMPLY NOT
15 TRUE, AND IT SHOULDN'T BE BEFORE THIS COURT. IT'S A
16 MISREPRESENTATION OF FACTS, AND THERE ARE NO FACTS
17 SUPPORTING IT AT ALL.

18 WITH REGARD TO THE CITY, OF COURSE THE CFO OF
19 NORCAL UNDERSTOOD THAT IT WAS THE CITY THAT HAD MADE THE
20 REPRESENTATION.

21 AS THE COURT POINTED OUT, THERE'S NOTHING
22 NEFARIOUS OR SUGGESTIVE OF AN UNDERSTANDING OF ILLEGALITY
23 THERE, AND THAT BRINGS US TO WHAT I BELIEVE IS THE CRUX OF
24 THE ISSUE THAT THIS COURT WAS ASKING MR. FINKELSTEIN ABOUT.

25 EVEN IF WE ASSUME THAT THIS STRAINED AND
26 CONVOLUTED BRIBERY SCHEME AS PAINTED BY THE DISTRICT
27 ATTORNEY, WHICH INVOLVES THE MAYOR SAYING WE WOULD LIKE YOU
28 TO USE THE TEAMSTERS AND MAKING SOME KIND OF REPRESENTATION

SUE HERFURTH, CSR #9645

1149

1 IN RESPONSE AS TO WHAT HE WOULD DO, WHETHER IT BE I PROMISE
2 WE'LL REIMBURSE YOU, I PROMISE TO USE MY BEST EFFORTS IN
3 YOUR BEHALF, THERE ARE THINGS TO SAY ABOUT THAT.

4 FIRST IS IF THE DISTRICT ATTORNEY IS CORRECT THAT
5 MAKING SUCH A PROMISE WAS A CRIME, THEN HE'S GOT IT, AND IN
6 THE TESTIMONY FROM MR. SANGIACOMO, HE DOESN'T NEED ANY THAT
7 INVOLVE COMMUNICATIONS BETWEEN CLIENT AND ATTORNEY, HE HAS A

8 PROMISE, AND HE' S RIGHT.
9 SECOND OF ALL, WE THINK HE' S WRONG.
10 THIRD OF ALL, THERE IS NO INDICATION THAT
11 MR. SANGIACOMO OR HIS ATTORNEYS OR KPMG HAD ANY
12 UNDERSTANDING THAT THERE HAD BEEN AN ILLEGAL EVENT AT THAT
13 OCTOBER 6 MEETING. NOTHING.
14 AND IT' S CORRECT THAT UNLESS MR. SANGIACOMO WAS
15 INTENDING TO DECEIVE OR TO DEFRAUD OR TO COMMIT SOME KIND OF
16 NEFARIOUS ACTIVITY USING HOWARD RICE, BASED UPON HIS
17 KNOWLEDGE OR DECEPTION, THAT THERE WOULD BE NO CRIME FRAUD
18 HERE, SO THERE' S NO PRIMA FACIE CASE UNDER ANY STANDARD.
19 WHAT' S EQUALLY CLEAR IS THAT IN THIS CIRCUMSTANCE,
20 AND IT' S IN AN EXHIBIT WE APPENDED TO THE WHEELER
21 DECLARATION IN OUR MOST RECENT RESPONSE IN OPPOSITION TO THE
22 DISTRICT ATTORNEY' S PAPERS, THE INFORMATION CONCERNING THE
23 CIRCUMSTANCES OF THE DISCUSSION WERE BEFORE KPMG; THEY KNEW
24 THAT THIS HAD OCCURRED.
25 AND AGAIN, CONTRARY TO THE INFERENCE THAT THE
26 DISTRICT ATTORNEY WOULD ASK THE COURT TO DRAW, THE FACT THAT
27 KPMG DIDN' T TALK ABOUT THE OCTOBER 6 DISCUSSION OR THAT THE
28 PROMISE WAS CONSIDERED BY SOMEBODY TO HAVE BEEN ILLEGAL

SUE HERFURTH, CSR #9645

1150

1 PAYMENT, THE POINT IS IT NEVER OCCURRED TO ANYBODY THAT THAT
2 WAS TRUE. THE ONLY PERSON IT' S OCCURRED TO IS THE DISTRICT
3 ATTORNEY.
4 BUT THE DIEDRICH CASE, I WANT TO TALK ABOUT THAT
5 TO THE COURT BRIEFLY. THERE WERE TWO TRANSACTIONS THAT ARE

6 CONSIDERED TO HAVE CONSTITUTED BRIBERY IN THAT CASE WITH THE
7 SUPERVISOR.

8 ONE IS FUNNELING FUNDS THROUGH THE PRIVATE
9 ATTORNEY OF THE SUPERVISOR, DIRECTLY TO THE SUPERVISOR,
10 CLEARLY A CRIME.

11 THE SECOND WAS FUNNELING \$150,000 TO THE ATTORNEY.
12 I NOTICE THE DISTRICT ATTORNEY CALLED HIM HIS FRIEND.
13 THAT'S TRUE, HE WAS THE SUPERVISOR'S CLOSE FRIEND; HE WAS
14 ALSO HIS CAMPAIGN FINANCE MANAGER.

15 SO \$150,000 WAS FUNNELED DIRECTLY TO THE
16 SUPERVISOR'S CAMPAIGN FINANCE MANAGER, AND THE COURT HELD
17 THAT THAT WOULD SUPPORT AN INFERENCE THAT THERE HAD BEEN A
18 BENEFIT OR ADVANTAGE CONFERRED ON THE SUPERVISOR.

19 WHAT THE DISTRICT ATTORNEY IS ALLEGING HERE IS
20 THAT A CONTRACT WAS MADE WITH THE TEAMSTERS, AND THE
21 TEAMSTERS WERE HIRED. NOTICE IT'S NOT THE UNION THAT'S
22 HIRED, IT'S THE MEMBERS OF THE UNION THAT ARE ENGAGED TO
23 WORK AT THE FACILITY.

24 WHILE IT'S POSSIBLE, AS THE COURT WAS SUGGESTING,
25 THAT THE DISTRICT ATTORNEY COULD PRESENT EVIDENCE, SOME KIND
26 OF EVIDENCE THAT THAT MEANT A BENEFIT OR AN ADVANTAGE WOULD
27 BE CONFERRED ON THE MAYOR OF SAN JOSE, THERE'S NO SUCH
28 EVIDENCE IN THE RECORD, AND CERTAINLY THERE'S NO EVIDENCE

SUE HERFURTH, CSR #9645

1151

1 THAT MR. SANGIACOMO OR HIS ATTORNEYS OR ANYBODY ELSE
2 UNDERSTOOD THAT THAT WAS THE CASE. SO THERE'S NO CRIME
3 FRAUD HERE UNDER ANY STANDARD.

4 WE SUBMIT THE STANDARD IS NOT LESS THAN PROBABLE
5 CAUSE, THE STANDARD IS MORE THAN PROBABLE CAUSE. IT'S
6 EVIDENCE THAT, UNREBUTTED, WOULD SUPPORT THE INFERENCE THAT
7 A CRIME OR FRAUD HAS BEEN COMMITTED. IT CAN'T JUST BE
8 SUSPICION, THERE HAS TO BE EVIDENCE IT WAS COMMITTED.

9 WE SUBMIT THE SCHOOL DISTRICT CASE IS CONTROLLING
10 HERE. IT'S TRUE IT WAS A FIRST AMENDMENT ISSUE THERE, BUT
11 THE POINT IS THAT THE, QUOTE, ADVANTAGE OR BENEFIT THAT WAS
12 BEING REQUESTED WAS ONE THAT COULD BE CONFERRED LEGALLY AND
13 APPROPRIATELY AND GAVE NO INFERENCE OF CORRUPT INTENT OR
14 BENEFIT OR ADVANTAGE TO THE MAYOR OF SAN JOSE IN THIS
15 SITUATION.

16 THAT IS WHAT I HAVE TO SAY ABOUT THE CRIME FRAUD.

17 THE COURT: DID YOU HAVE ANYTHING ELSE TO TALK
18 ABOUT BEFORE I ASK YOU SOME QUESTIONS?

19 MR. CASSMAN: NO, I DON'T.

20 THE COURT: LOOKING AT MR. WHEELER'S DECLARATION,
21 WHICH IS EXHIBIT A TO YOUR MEMO OF POINTS AND AUTHORITIES,
22 ON PAGE TWO AT THE TOP HE SPEAKS OF \$98,077. I TAKE IT THAT
23 WAS 98,077 PAGES, NOT --

24 MR. CASSMAN: THAT'S CORRECT, I'M SORRY. NOT
25 DOLLARS.

26 THE COURT: IF YOU KNOW, WHEN HOWARD RICE DID ITS
27 DOCUMENT ASSEMBLY IN RESPONSE TO THE SUBPOENA, DID IT CREATE
28 OR HAVE ANY TYPE OF A LOG FOR PRIVILEGED DOCUMENTS OR

SUE HERFURTH, CSR #9645

1152

1 DOCUMENTS IT WAS --

2 MR. CASSMAN: NOT AT THAT TIME. MY
3 UNDERSTANDING --
4 THE COURT: LET ME ASK YOU, AND I'LL ALSO ASK
5 MR. FINKELSTEIN, OF COURSE. WHO HAS THE BURDEN FOR PROVING
6 OR FOR ESTABLISHING OR SHOWING THE INADVERTENCE OF THE
7 DISCLOSURE?
8 MR. CASSMAN: I BELIEVE WE DO.
9 THE COURT: DO YOU AGREE, MR. FINKELSTEIN?
10 MR. FINKELSTEIN: I THINK THAT'S RIGHT.
11 THE COURT: THANK YOU.
12 MR. FINKELSTEIN: NO, BECAUSE YOU HAVE A VOLUNTARY
13 DISCLOSURE WHICH ON ITS FACE APPEARS TO BE A WAIVER. THE
14 BURDEN IS TO CHANGE THE --
15 THE COURT: I THINK YOU'RE IN AGREEMENT.
16 YOU OFFERED TO LET THE COURT TAKE A LOOK AT THE
17 DOCUMENTS IN QUESTION, AND I'M INTERESTED IN WHAT HAS BEEN
18 REFERRED TO AS THE PAPER MEMO --
19 MR. CASSMAN: THERE'S THE BILL JONES MEMORANDUM.
20 THE COURT: I'M SORRY, THE JONES MEMORANDUM.
21 MR. CASSMAN: WE HAVE IT HERE, YOUR HONOR. IT
22 WOULD BE OUR PLEASURE TO PRESENT IT FOR YOU.
23 THE COURT: I WOULD LIKE TO TAKE A LOOK AT IT.
24 MR. CASSMAN: AT THIS TIME?
25 THE COURT: YES.
26 MR. CASSMAN: MAY I HAVE AN INTERN CHECK -- BEFORE
27 THE COURT LOOKS AT IT, COULD I SAY ONE MORE THING THAT I
28 MEANT TO MENTION?

SUE HERFURTH, CSR #9645

1 THE COURT: YOU MAY.

2 MR. CASSMAN: WITH REGARD TO CRIME FRAUD, THERE IS
3 NO FACTUAL PREDICATE OR ASSERTION THAT THAT MEMORANDUM WAS
4 PREPARED AT THE BEHEST OF MR. SANGIACOMO. IN FACT, THE
5 FACTS ESTABLISH OTHERWISE. THERE'S NO SUGGESTION THAT HE
6 EVER KNEW IT WAS GOING TO BE MADE OR CREATED.

7 MR. FINKELSTEIN: WE AGREE TO THAT FACT; THAT'S
8 NOT OUR ARGUMENT.

9 MR. CASSMAN: THEREFORE, THERE IS NO SUGGESTION
10 THAT HE CONVEYED THE INFORMATION CONTAINED IN THAT
11 MEMORANDUM WITH THE IDEA OF FURTHERING SOME KIND OF FRAUD.

12 THE COURT: THE COURT HAD THAT IMPRESSION.

13 LET ME TAKE A LOOK AT THIS.

14 WE'LL BE OFF THE RECORD WHILE I DO THIS SO YOU CAN
15 STRETCH.

16 (STRETCH BREAK.)

17 THE COURT: WE'LL GO BACK ON THE RECORD.

18 MR. CASSMAN, IF THE COURT WERE TO GRANT THE
19 DISTRICT ATTORNEY'S REQUEST WITH RESPECT TO THE BILL JONES
20 MEMO, IT DOES APPEAR THAT THERE MAY BE ONE OR MORE PORTIONS
21 THAT INCLUDE IMPRESSIONS, CONCLUSIONS, OPINIONS, ET CETERA,
22 OF THE ATTORNEY, AND THE COURT WOULD BE INCLINED TO HAVE
23 THOSE DELETED OR MADE UNREADABLE.

24 THE ONLY ONE I CAN IDENTIFY FROM MY QUICK READING
25 ARE THE LAST TWO SENTENCES OF THE FIRST PARAGRAPH. CAN YOU
26 POINT OUT ANY OTHERS TO THE COURT THAT YOU WOULD REQUEST TO
27 BE REDACTED?

28 MR. CASSMAN: YOUR HONOR, IN ADDITION, YOU KNOW, I

1 HAVEN' T STUDIED IT CLOSELY, AND I WOULD ASK FOR THE
2 OPPORTUNITY TO DO THAT AND SUBMIT A PROPOSED REDACTED
3 VERSION.

4 MR. FINKELSTEIN: WE HAVE NO OBJECTION TO THAT
5 PROCEDURE.

6 MR. CASSMAN: ALSO CONTAINED WITH THE MEMORANDUM
7 AS A WHOLE ARE SUBJECT MATTERS THAT ARE NONRESPONSIVE TO THE
8 SUBPOENA, AND I DIRECT TO YOU PAGE FOUR, WHERE IT BEGINS.

9 THE COURT: THAT' S TRUE. I AGREE.

10 MR. CASSMAN: SO WE WOULD SUBMIT A PROPOSED
11 REDACTION IN THE EVENT THE COURT ORDERED THAT THERE WAS TO
12 BE PRODUCTION.

13 I WOULD NOTE ON THIS LINE THAT THE VERY FACT THAT
14 THERE ARE SUCH NONRESPONSIVE SUBJECT MATTERS CONTAINED
15 WITHIN THE JONES MEMORANDUM, IT' S ALSO TRUE OF THE THOMPSON
16 MEMORANDUM, YOUR HONOR, AND SUPPORTS BOTH OUR POSITION THAT
17 IT CLEARLY WASN' T VETTED, ALSO THAT IT SHOULD HAVE BEEN
18 APPARENT TO THE DISTRICT ATTORNEY' S OFFICE UPON REVIEWING IT
19 THAT IT HAD NOT BEEN VETTED OR APPROPRIATELY EVALUATED FOR
20 PRODUCTION.

21 THE COURT: I' LL RETURN THE DOCUMENT TO YOU AT
22 THIS TIME.

23 MR. CASSMAN: THANK YOU, YOUR HONOR.

24 THE COURT: MR. FINKELSTEIN, I WANT TO GIVE YOU AN
25 OPPORTUNITY TO RESPOND. I' LL ALSO GIVE MR. CASSMAN AN
26 OPPORTUNITY.

27 LET ME MAKE SURE THAT KPMG DOES NOT WISH TO ARGUE.
28 I' VE READ YOUR PAPERS, I UNDERSTAND YOUR POSITION IN THE

1 MATTER, AND I'LL NOT SOLICIT YOUR ARGUMENT IF YOU DON'T --

2 MR. NIERLICH: AS INDICATED IN OUR PAPERS, KPMG IS
3 A NEUTRAL STAKEHOLDER THAT TAKES NO POSITION ON THE RETURN
4 OF THIS APPLICATION. UNLESS YOU HAVE ANY QUESTIONS, I HAVE
5 NOTHING FURTHER TO SAY.

6 THE COURT: THANK YOU. I DO WANT TO GIVE NORCAL'S
7 COUNSEL AN OPPORTUNITY TO ARGUE, IF YOU WISH TO.

8 MR. GOODMAN: I DO, YOUR HONOR.

9 THE COURT: IF IT'S SOMETHING I HAVEN'T ALREADY
10 HEARD.

11 MR. GOODMAN: I WILL TRY TO REFINE MYSELF TO JUST
12 ADDRESSING THE QUESTION OF THE SANGIACOMO WAIVER ISSUE.

13 THE COURT: THIS WAS IN HIS TESTIMONY?

14 MR. GOODMAN: THAT'S CORRECT, MR. SANGIACOMO'S
15 ACTUAL GRAND JURY TESTIMONY.

16 WILLIAM GOODMAN FOR NORCAL.

17 AS I THINK IS OBVIOUS, THERE CANNOT BE ANY CLAIM
18 THAT MR. SANGIACOMO COULD HAVE WAIVED HOWARD RICE'S WORK
19 PRODUCT PROTECTION, AND SO OBVIOUSLY THERE IS NO WAIVER
20 THERE.

21 AS TO THE ASSERTION THAT THERE WAS A WAIVER OF THE
22 ATTORNEY-CLIENT PRIVILEGE IN EFFECT BY THE CLIENT, AS
23 MR. FINKELSTEIN IS ASSERTING, I THINK THAT ARGUMENT IS
24 COMPLETELY WITHOUT MERIT. THE BURDEN OF PROOF WITH RESPECT
25 TO WAIVER IN THAT MATTER IS NOT ON US, IT'S ON THE DISTRICT
26 ATTORNEY.

27 THE CASE LAW IS PERFECTLY CLEAR EVEN IN DOUBTFUL
Page 152

28 CASES, AND WE DON'T THINK THIS ONE IS DOUBTFUL, AND ALL

SUE HERFURTH, CSR #9645

1156

1 INFERENCES SHOULD BE DRAWN AGAINST A WAIVER.

2 WHAT YOU HAVE HERE WHEN YOU READ THROUGH THE
3 SANGIACOMO TESTIMONY IS AS MUCH AS ANY OF US CAN --
4 OBVIOUSLY, MR. FINKELSTEIN, HAS THE WHOLE TESTIMONY, WE ONLY
5 HAVE REDACTED PORTIONS.

6 THERE WAS APPARENTLY EXTENSIVE QUESTIONING OF
7 MR. SANGIACOMO ABOUT THIS MEETING, AND THE QUESTIONING
8 OCCURRED OVER SOME PERIOD OF TIME DURING THE SESSION. AND
9 ONLY AT THE END OF THAT QUESTIONING, OR CERTAINLY AT THE END
10 OF THE SESSION, DID MR. FINKELSTEIN PUT IN FRONT OF
11 MR. SANGIACOMO THE THOMPSON MEMO THAT HAD THE WORDS
12 ATTORNEY-CLIENT PRIVILEGE/WORK PRODUCT ON IT. NO
13 FOREWARNING TO MR. SANGIACOMO WHATSOEVER, AND OF COURSE NO
14 FOREWARNING TO HOWARD RICE THAT MR. FINKELSTEIN HAD THIS
15 DOCUMENT.

16 MR. FINKELSTEIN SUGGESTED TO YOU THIS MORNING WHAT
17 MR. SANGIACOMO SHOULD HAVE DONE. THIS IS A WITNESS IN A
18 CLOSED GRAND JURY ROOM WHO IS TESTIFYING PURSUANT TO
19 SUBPOENA. WHAT HE'S SUPPOSED TO HAVE DONE IS IMMEDIATELY,
20 AS A LAYPERSON, NOTICED THAT DOCUMENT STATING THAT IT WAS
21 ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT. AND FRANKLY, I
22 CAN'T TELL FROM THE TRANSCRIPT WHETHER MR. SANGIACOMO EVEN
23 WAS SHOWN THE DOCUMENT BEFORE HE WAS ASKED QUESTIONS ABOUT
24 IT, BUT I WILL GIVE MR. FINKELSTEIN THE BENEFIT OF THE DOUBT
25 AND ASSUME THAT HE WAS, AND THAT MR. SANGIACOMO SHOULD

26 IMMEDIATELY HAVE LEFT THE ROOM AND STARTED TO TALK TO HIS
27 LAWYER ABOUT THAT.

28 I SUBMIT TO YOU THAT THAT'S SIMPLY UNREALISTIC,

SUE HERFURTH, CSR #9645

1157

1 AND ALSO IN NO EVENT IS THAT, IS THE ANSWERING OF QUESTIONS
2 THEREAFTER ABOUT THAT DOCUMENT A WAIVER OF ANY PRIVILEGE,
3 BECAUSE HE DOESN'T EVEN KNOW WHAT HIS RIGHTS ARE. THERE IS
4 NO EVIDENCE HE UNDERSTOOD HE WAS BEING SHOWN A PRIVILEGED
5 AND CONFIDENTIAL DOCUMENT, THE ONLY EVIDENCE IS THAT HE WAS
6 SHOWN A DOCUMENT. THAT IS THE THOMPSON MEMO, AND THAT HE
7 THEN IS ASKED QUESTIONS ABOUT IT, I GUESS TO TRY TO IMPEACH
8 HIM. NOTHING MORE THAN THAT.

9 WHAT SHOULD HAVE HAPPENED HERE, WHAT
10 MR. FINKELSTEIN SHOULD HAVE DONE IS HE SHOULD HAVE, WHEN HE
11 DISCOVERED THAT HE WAS IN POSSESSION OF THIS INADVERTENTLY
12 PRODUCED DOCUMENT THAT HAD ATTORNEY-CLIENT PRIVILEGE WRITTEN
13 ALL OVER IT AND WAS CLEARLY WORK PRODUCT BEYOND A SHADOW OF
14 A DOUBT, HE SHOULD HAVE CALLED MR. BAKER AND DISCUSSED IT
15 WITH HIM BEFORE MR. SANGIACOMO TESTIFIED, OR BEFORE SOME
16 PERIOD, AT THE TIME WHEN HE DISCOVERED THAT HE HAD THE
17 DOCUMENT. THAT'S WHAT A LAWYER IS SUPPOSED TO DO WHEN A
18 LAWYER IS IN POSSESSION OF A DOCUMENT THAT HAS THAT
19 CHARACTERISTIC.

20 AND MOST CERTAINLY WHAT HE SHOULD HAVE DONE BEFORE
21 HE PRESENTED THAT DOCUMENT TO MR. SANGIACOMO AND BEGAN
22 QUESTIONING HIM ABOUT IT AND QUESTIONING HIM THAT
23 EXTENSIVELY ABOUT THE COMMUNICATION BETWEEN MR. SANGIACOMO

24 AND THE WRITER OF THE MEMORANDUM, MR. THOMPSON, HE SHOULD
25 HAVE BROUGHT THE MATTER TO MR. BAKER'S ATTENTION AND ASKED
26 MR. BAKER IF MR. BAKER AND HIS FIRM HAD INTENDED TO ALLOW
27 THIS DOCUMENT TO GET INTO THE DISTRICT ATTORNEY'S
28 POSSESSION.

SUE HERFURTH, CSR #9645

1158

1 TO PLACE THE BURDEN ON THE WITNESS, A LAY WITNESS
2 WHO IS GIVEN NO ADVICE ABOUT THIS ISSUE BY ANYBODY,
3 CERTAINLY NOT BY MR. BAKER SINCE MR. BAKER DIDN'T KNOW THE
4 DOCUMENT WAS IN THE HANDS OF THE DISTRICT ATTORNEY; AND
5 CERTAINLY NOT BY MR. FINKELSTEIN, WHO PROFESSED TO HAVE NO
6 OBLIGATION TO DO SO; AND CERTAINLY NOT BY ANY JUDGE, BECAUSE
7 NO JUDGE SUPERVISES THE ONGOING COLLOQUIES WITHIN THE GRAND
8 JURY ROOM, IS TOTALLY UNREALISTIC, AND I SUBMIT TO YOU
9 RENDERS ANY COMMUNICATION BY MR. SANGIACOMO AND THE DISTRICT
10 ATTORNEY CHARACTERIZED AS A WAIVER TO HAVE BEEN NOT
11 KNOWINGLY, INTELLIGENTLY MADE, WHICH IS A CLASSIC NONWAIVER
12 UNDER THE LAW.

13 IT'S JUST CLASSIC. THIS IS A MAN WHO IS BASICALLY
14 SET UP. IT LOOKS LIKE A TRAP WAS SET FOR HIM WITH THIS
15 DOCUMENT TO BE USED TO IMPEACH HIM IF IT BECAME NECESSARY,
16 AND THAT CAN'T POSSIBLY BE SEEN AS KNOWING, VOLUNTARY
17 RELINQUISHMENT OF THE RIGHT THAT MR. SANGIACOMO HAD TO
18 MAINTAIN THE ATTORNEY-CLIENT PRIVILEGE.

19 SO I WOULD SUBMIT THAT THE ARGUMENT MADE BY THE
20 DISTRICT ATTORNEY'S OFFICE SIMPLY HAS TO BE REJECTED. AND I
21 FEAR, YOUR HONOR, THAT WHAT'S GOING TO HAPPEN HERE IS THAT

22 IF WE END UP IN A SITUATION WHERE THE COURT CONCLUDES THAT
23 THERE HAS BEEN A WAIVER, OR OTHERWISE THAT THESE PRIVILEGED
24 MATTERS OR EVEN THESE MATTERS SUBJECT TO WORK PRODUCT
25 PROTECTION ARE GOING TO BE AT ISSUE IN THE GRAND JURY, THAT
26 WE' RE GOING TO FIND MR. FINKELSTEIN QUESTIONING OTHER NORCAL
27 WITNESSES ABOUT ATTORNEY-CLIENT COMMUNICATIONS, AND WE WILL
28 BE BACK IN FRONT OF YOU ON THOSE, QUESTIONING HOWARD RICE

SUE HERFURTH, CSR #9645

1159

1 LAWYERS ABOUT THEIR SIDE OF THOSE COMMUNICATIONS, AND
2 MR. CASSMAN AND I WILL BE BACK IN FRONT OF YOU.

3 I THINK IT IS FRAUGHT WITH PERIL TO MOVE IN THAT
4 DIRECTION. I RECOGNIZE SOME OF THIS IS A RESULT OF
5 INADVERTENT PRODUCTION THAT MAY HAVE TRIGGERED THIS, BUT IT
6 WAS INADVERTENT, NOBODY WANTED THAT TO HAPPEN, CERTAINLY
7 NOBODY AT HOWARD RICE AND NOBODY AT NORCAL, AND NOBODY KNEW
8 IT HAD HAPPENED.

9 AND I' M VERY CONCERNED WE' RE GOING TO START TO SEE
10 THIS INVESTIGATION, WHEREVER IT' S GOING, MOVED OFF INTO A
11 WORLD OF INQUIRIES ABOUT WHAT HAPPENED BETWEEN LAWYERS AND
12 THEIR CLIENTS, AND I DON' T THINK THAT' S WHERE WE WANT THIS
13 TO END UP.

14 THE COURT: ALL RIGHT. THANK YOU.

15 MR. CASSMAN, I WANT TO ASK YOU ANOTHER QUESTION
16 THAT' S OCCURRED TO ME.

17 IS IT HOWARD RICE' S POSITION THAT FROM THE TIME OF
18 THE PRODUCTION OF DOCUMENTS IN JANUARY THAT NO HOWARD RICE
19 ATTORNEY REVIEWED THE DOCUMENTS PRODUCED UNTIL THE THOMPSON

20 MEMO WAS CALLED TO THE ATTENTION OF HOWARD RICE COUNSEL ON
21 THE DAY OF THE GRAND JURY HEARING?

22 MR. CASSMAN: I CAN'T QUITE ANSWER THAT, BECAUSE I
23 DON'T HAVE THE SPECIFIC KNOWLEDGE CALLED FOR.

24 I KNOW, BASED ON THE TWO DECLARATIONS SUBMITTED BY
25 MR. WHEELER AND MR. BAKER, NO HOWARD RICE ATTORNEY
26 RECOGNIZED THAT THE THOMPSON MEMORANDUM HAD BEEN PRODUCED
27 UNTIL THE APPEARANCE BEFORE THE GRAND JURY BY
28 MR. SANGIACOMO.

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1160

1 THE INFERENCE FROM THAT IS THAT NO ONE ACTUALLY
2 REVIEWED THE ENTIRE PRODUCTION OF 4,000 DOCUMENTS AND
3 RECOGNIZED THAT MEMORANDUM WAS CONTAINED WITHIN IT. BUT I
4 CAN GET THE ANSWER FOR THE COURT, IF THE COURT WANTS ME TO
5 DO THAT.

6 THE COURT: LET ME ASK ANOTHER QUESTION THAT YOU
7 MAY NOT HAVE AN ANSWER FOR.

8 ARE YOU SAYING THAT NO ATTEMPT WAS MADE TO PREPARE
9 THE WITNESS FOR HIS TESTIMONY BEFORE THE GRAND JURY?

10 MR. CASSMAN: I CAN'T ANSWER THAT QUESTION EITHER.
11 I WOULD IMAGINE THAT SOME EFFORT WAS, BUT IT WOULD SURPRISE
12 ME IF THEY WENT THROUGH 4,000 DOCUMENTS THAT HAD BEEN
13 PRODUCED. I DON'T KNOW THE ANSWER TO THAT.

14 THE COURT: THANK YOU.

15 MR. GOODMAN: YOUR HONOR, CAN I MAKE ONE SLIGHT
16 ADDITION TO MY REMARKS? I APOLOGIZE, WHEN I SPOKE A MOMENT
17 AGO I STATED THAT THE THOMPSON MEMO SAID ON IT

18 ATTORNEY-CLIENT PRIVILEGE, WORK PRODUCT.

19 ACTUALLY, WHAT IT SAID IS CONFIDENTIAL, ATTORNEY
20 WORK PRODUCT. THAT IS A SMALL BUT ACTUALLY SORT OF
21 IMPORTANT POINT, BECAUSE IT DOES NOT SAY ATTORNEY-CLIENT
22 PRIVILEGE ON IT.

23 SO EVEN IF MR. SANGIACOMO, WHO IS A LAYPERSON, NOT
24 A LAWYER, MIGHT HAVE HAD A BELL RING IN HIS HEAD IF HE SAW
25 THE WORDS ATTORNEY-CLIENT PRIVILEGE ON DOCUMENTS, BEING THE
26 CLIENT, WHEN HE SEES ATTORNEY WORK PRODUCT ON A DOCUMENT,
27 THE LIKELIHOOD THAT THAT WOULD SET OFF ANY BELLS AND
28 WHISTLES IN HIS MIND I THINK WOULD BE EVEN MORE REMOTE.

SUE HERFURTH, CSR #9645

1161

1 IN EITHER EVENT, MY COMMENTS ON THE WHOLE ISSUE OF
2 WHETHER SOMEBODY IN HIS POSITION COULD BE EXPECTED TO MAKE A
3 KNOWING, INTELLIGENT WAIVER BASED ON WHATEVER WAS ON THE
4 DOCUMENT, I THINK HAS PERHAPS EVEN MORE FORCE GIVEN THE FACT
5 THAT IT'S A CONFIDENTIAL ATTORNEY WORK PRODUCT.

6 THE COURT: LET ME ASK YOU ANOTHER THING ABOUT IT,
7 OR IF MR. CASSMAN IS THE BETTER PERSON TO ANSWER. I ALSO
8 NOTICED THE BATES STAMP ON THE DOCUMENT, AND I DON'T HAVE
9 ANY OTHER DOCUMENTS IN THE PRODUCTION TO LOOK AT. IT ALSO
10 SHOWS A NUMBER AND THEN CONFIDENTIAL. WERE ALL THE
11 DOCUMENTS IN THE PRODUCTION MARKED WITH A NUMBER AND
12 CONFIDENTIAL?

13 MR. GOODMAN: APPARENTLY, THEY ALL WERE.

14 THE COURT: IS THAT YOUR UNDERSTANDING ALSO?

15 MR. FINKELSTEIN: I THINK THAT'S RIGHT. I'M NOT
Page 158

16 SURE, BUT I THINK THAT'S RIGHT.

17 THE COURT: WHY IS THAT CONFIDENTIAL PLACED ON
18 THERE, IF ANYONE KNOWS?

19 MR. GOODMAN: I DON'T KNOW THE ANSWER TO THAT.

20 THE COURT: ALL RIGHT. THANK YOU.

21 I'LL LET THE DISTRICT ATTORNEY RESPOND, BRIEFLY,
22 IF YOU WOULD.

23 MR. FINKELSTEIN: I WILL TRY, YOUR HONOR.

24 THE COURT: THEN I'LL GIVE OTHER COUNSEL THE
25 OPPORTUNITY TO RESPOND.

26 MR. FINKELSTEIN: MR. GOODMAN SUGGESTS THAT IT'S
27 UNTHINKABLE THAT A LAYPERSON LIKE THE NORCAL CEO WOULD HAVE
28 THE KNOWLEDGE OR ABILITY TO ASK TO STEP OUTSIDE OF A JURY

SUE HERFURTH, CSR #9645

1162

1 ROOM AND CONSULT WITH COUNSEL ABOUT WHETHER OR NOT TO ANSWER
2 THE QUESTION.

3 WELL, LET ME DIRECT THE COURT'S ATTENTION TO
4 EXHIBIT 17, WHICH IS A PART OF MY DECLARATION. THAT'S AN
5 EXCERPT OF MR. SANGIACOMO'S TESTIMONY REGARDING A DIFFERENT
6 MEMO, THE BRASLAW MEMO, WHICH IS NOT MARKED IN ANY WAY OTHER
7 THAN AT THE BATES STAMP ON THE BOTTOM, POSSIBLY
8 CONFIDENTIAL.

9 IN THAT EXCERPT, STARTING AT PAGE 100 OF THE
10 EXCERPT, AT LINE 18, I ASK THE FOLLOWING QUESTION OF
11 MR. SANGIACOMO:

12 QUESTION: DID YOU CONSIDER YOUR OCTOBER 6,
13 2000 MEETING WITH MAYOR GONZALES AND JOE GUERRA AT

14 CITY HALL TO BE PART OF SOME FINAL CONTRACT
15 NEGOTIATIONS?

16 NOW, THIS IS IN CONTEXT WITH THE STATEMENTS I HAD
17 EXAMINED HIM ABOUT IN CONNECTION WITH THE BRASLAW MEMO.

18 HIS ANSWER IS:

19 ANSWER: I'M NOT SURE IF I KNOW HOW TO ANSWER
20 THAT WITHOUT DISCUSSING IT WITH AN ATTORNEY.

21 QUESTION: IF YOU WOULD LIKE TO STEP OUTSIDE,
22 YOU MAY DO SO.

23 ANSWER: OKAY. CAN I TAKE THIS?

24 THE COURT: THE COURT HAS READ THAT.

25 MR. FINKELSTEIN: THE OTHER THING IS THAT
26 MR. GOODMAN SEEMS TO CONFUSE OR BLEND THE CONCEPT OF
27 UNCOERCED DISCLOSURE, WHICH IS THE FIRST PRONG OF 912(A),
28 WITH THE WAIVER PRONG, WHICH IS CONSENT TO A THIRD PARTY.

SUE HERFURTH, CSR #9645

1163

1 AND SO WHILE I THINK THAT'S A DANGEROUS PATH TO TAKE,
2 BECAUSE WHEN YOU'RE TALKING ABOUT WAIVER, IT SUGGESTS ALL
3 CONSTITUTIONAL WAIVERS THAT THE COURT FROM ITS CRIMINAL
4 EXPERIENCE KNOWS AS THE SAFEGUARDS THAT WE EMPLOY WHEN
5 CONSTITUTIONAL RIGHTS ARE BEING WAIVED.

6 912(A) HAS A SECOND PRONG. ACTUALLY, THE FIRST
7 PRONG, WHICH IS VOLUNTARY DISCLOSURE, AND UNDER THE
8 VOLUNTARY DISCLOSURE BY THE CLIENT, THERE'S NO REQUIREMENT
9 TO INTEND TO WAIVE.

10 YOU KNOW, ONE OF THE, I GUESS, ADVANTAGES OF
11 PRACTICING IN CRIMINAL LAW AS I DO IS GENERALLY THE CORE

12 LEGAL PRINCIPLES ARE NOT THIS FUNDAMENTAL, IT'S USUALLY A
13 FACTUAL DISPUTE.

14 I WOULD URGE THE COURT TO LOOK AT SOME CORE LEGAL
15 PRINCIPLES THAT ARE BEING DISPUTED HERE THAT OUGHT NOT TO
16 BE.

17 FOR EXAMPLE, THE ARGUMENT WAS ADVANCED THAT IN
18 ORDER TO FIND THAT THE CRIME FRAUD EXCEPTION APPLIES TO THE
19 THOMPSON MEMO, THE COURT HAS TO FIND THAT THE COMMUNICATION
20 WAS TO FURTHER THE FRAUD. NOW, THAT'S NOT THE STANDARD.
21 THE STANDARD IS THE THOMPSON MEMO HAS TO BE REASONABLY
22 RELATED TO THE FRAUD. IT'S REASONABLY RELATED BECAUSE IT'S
23 THREE WEEKS BEFORE THE FIRST LETTER FROM MR. BAKER, AND IT
24 SHOWS MR. BAKER HAVING KNOWLEDGE OF THE ILLEGAL NATURE OF
25 THE CONSIDERATION FOR WHICH THE REIMBURSEMENT IS BEING
26 SOUGHT.

27 NEXT, THEIR ANALYSIS OF PEOPLE VS. DIETRICH, IT'S
28 NOT AN OBSCURE CASE, I MUST CONFESS I FOUND IT IN A FEW

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1164

1 MINUTES, BECAUSE IT'S IN THE ANNOTATION TO CALIFORNIA
2 CRIMINAL JURY INSTRUCTIONS AND FORMER CJIC JURY
3 INSTRUCTIONS.

4 IF THE COURT LOOKS AT THE INSTRUCTION RELYING ON
5 DIETRICH, THOSE INSTRUCTIONS ALLOW THE THING OF VALUE TO GO
6 TO, AND I QUOTE, SOMEONE ELSE. I DON'T BELIEVE AND I DON'T
7 THINK IT WAS INTENTIONAL. I THINK MR. CASSMAN MISUNDERSTOOD
8 THE FACTS IN DIETRICH.

9 IN ONE TRANSACTION WHICH WOULD CONSTITUTE A BRIBE,
Page 161

10 THERE WAS THE POSSIBILITY OF SOME OF THE ILL-GOTTEN GAINS
11 GOING TO THE ELECTED OFFICIAL. BUT THE OTHER TRANSACTION, I
12 DON'T BELIEVE -- THAT'S THE TRANSACTION INVOLVING THE
13 SUPERVISOR'S FRIEND WHO WAS OFFERING TO GET THE SUPERVISOR'S
14 FAVORABLE OPINION AND VOTE IN EXCHANGE FOR AN INFLATED
15 PURCHASE PRICE FOR HIS PROPERTY. I DON'T BELIEVE THERE'S
16 EVIDENCE IN THAT TRANSACTION THAT ANY PORTION OF THAT IS
17 GOING TO GO TO THE SUPERVISOR. AND I DON'T BELIEVE THAT I
18 TOLD THE COURT THAT THIS \$11 MILLION SAVING MADE ITS BID THE
19 LOWEST, I SAID IT MADE IT LOWER BY \$11 MILLION. THAT'S NOT
20 SUBJECT TO DISPUTE.

21 AND FINALLY, THERE IS SOME EVIDENCE WHICH I'VE
22 LOCATED DURING ARGUMENT ABOUT THIS AGREEMENT, AND THAT
23 EVIDENCE IS FOUND IN EXHIBIT 1 TO MY DECLARATION. THAT IS
24 THE ADDENDUM SIGNED BY NORCAL AND CWS WHICH SAYS, REFERS TO
25 THE AMOUNT OF WAGES AND BENEFITS REQUIRED TO BE PAID IN
26 CWS'S AGREEMENT WITH ILWU LOCAL 6 IN EFFECT AS OF JULY 1,
27 2002.

28 THIS IS AN ADDENDUM THAT COVERS THE DIFFERENTIAL

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1165

1 IN SAN JOSE, IN SAN JOSE, BETWEEN THE TEAMSTERS AND THE
2 LONGSHOREMEN. AND THE ONLY WAY THOSE WAGES COULD BE
3 REQUIRED TO BE PAID TO ILWU LOCAL 6 IS IF THERE WAS SOME
4 KIND OF EXPANSION AGREEMENT IN EFFECT. BUT I DON'T WANT
5 THIS IMPORTANT ISSUE INVOLVING THIS KEY EVIDENCE IN THIS
6 CASE THAT'S ESSENTIAL TO THE CASE TO TURN ON AN OVERSIGHT ON
7 MY PART IN NOT INCLUDING THAT AGREEMENT, AND I'M HAPPY TO

8 SUBMIT THE AGREEMENT AND THE TESTIMONY FROM CWS' S PRESIDENT
9 ABOUT THAT AGREEMENT TO COUNSEL AND TO CONTINUE THE MATTER
10 IF THE COURT DEEMS THAT' S IMPORTANT AND NECESSARY, AND I
11 COULD DO THAT VERY QUICKLY.

12 THE FINAL STATEMENT I WANT TO MAKE IS THE REASON
13 KPMG HAD NO UNDERSTANDING ABOUT THE ARGUABLY ILLEGAL NATURE
14 OF THE CONSIDERATION IS BECAUSE NORCAL HID IT FROM KPMG.
15 THAT' S WHY THEY HAD NO UNDERSTANDING, IS BECAUSE NORCAL
16 DIDN' T TELL THEM ABOUT THE CONVERSATION WITH THE MAYOR.
17 THEY TOLD HIM ABOUT SOME CITY REQUIREMENT WHICH SUGGESTED
18 PRESUMABLY A LAWFUL REQUIREMENT. THAT' S WHY KPMG HAD NO
19 UNDERSTANDING OF THE ILLEGAL NATURE.

20 THANK YOU.

21 THE COURT: THANK YOU. MR. CASSMAN?

22 MR. CASSMAN: YES, YOUR HONOR. IT' S MY
23 UNDERSTANDING, IN THIS RESPONSE TO THE COURT' S QUESTION, AND
24 I DIDN' T GET THE OPPORTUNITY TO RESPOND, THAT THE REASON THE
25 CONFIDENTIAL IS MARKED AT THE BOTTOM IS BECAUSE IT WAS PART
26 OF THE PRODUCTION TO THE GRAND JURY.

27 THE COURT: ALL RIGHT.

28 MR. CASSMAN: THE DISTRICT ATTORNEY SAID AGAIN,

SUE HERFURTH, CSR #9645

1166

1 AND IT IS ESSENTIALLY THE WHOLE FOUNDATION OF THEIR
2 ARGUMENT, WHY WE' RE HERE, THAT WHEN MR. BAKER REVIEWED THE
3 THOMPSON MEMORANDUM, HE WAS ON NOTICE THAT AN ILLEGAL
4 TRANSACTION HAD OCCURRED. NOW, THAT' S JUST WRONG AND IT' S
5 FALSE, AND IT' S THOSE KINDS OF WILD AND LOOSE ACCUSATIONS

6 AGAINST PRESTIGIOUS ATTORNEYS WHO PRACTICE BEFORE THE BAR
7 THAT DRIVES LAWYERS OUT OF THE PRACTICE, THAT MAKES IT
8 UNACCEPTABLE THAT THEY SHOULD HAVE THEIR REPUTATIONS
9 TARNISHED IN THIS WAY. IT'S JUST WRONG, AND IT SHOULD NOT
10 BE COUNTENANCED. IT'S CERTAINLY NOT SUSTAINED BY THE
11 EVIDENCE BEFORE THIS COURT.

12 WITH REGARD TO DIEDRICH, YES, THE INSTRUCTIONS SAY
13 SOME OTHER PERSON. BUT THEY SAY THAT THE PERSON SOLICITING
14 THE BRIBE OR ACCEPTING THE BRIBE HAS TO ACT WITH CORRUPT
15 INTENT.

16 NOW, THERE ARE NUMEROUS OCCASIONS WHERE PUBLIC
17 OFFICIALS ASK FOR A FAVOR HERE AND SAY THEY WILL DO
18 SOMETHING THERE. IT HAPPENS EVERY DAY IN EVERY OFFICE
19 THROUGHOUT THE STATE OF CALIFORNIA, PROBABLY THROUGHOUT THE
20 COUNTRY. THAT'S NOT A CRIME, IT HAPPENS ALL THE TIME.

21 THE IDEA THAT A BENEFIT IS CONFERRED ON SOME THIRD
22 PERSON, THAT IS NOT A BRIBE, THAT'S NOT WHAT THE INSTRUCTION
23 MEANS BECAUSE IT CAN'T BE READ JUST SOME OTHER PERSON, IT'S
24 SOME OTHER PERSON WITH CORRUPT INTENT. GIVE \$150,000 TO MY
25 CAMPAIGN MANAGER; CORRUPT INTENT, READILY INFERRED. GIVE
26 THAT CONTRACT TO THE TEAMSTERS.

27 I SUBMIT ON THE RECORD BEFORE THE COURT THE
28 THOMPSON MEMORANDUM, THE TESTIMONY OF MR. SANGIACOMO, THE

SUE HERFURTH, CSR #9645

1167

1 NEWS ARTICLE OP-ED SECTION WRITTEN BY MR. SANGIACOMO IN
2 WHICH HE TRUMPETS THE OCTOBER 6TH CONVERSATION WITH THE
3 MAYOR, THERE IS NO SUGGESTION OF CORRUPT INTENT.

4 NO ONE UNDERSTOOD THAT THAT'S WHAT WAS HAPPENING.
5 AND IT'S ONLY THE SPINNING WEB OF THE DISTRICT ATTORNEY THAT
6 IS CASTING SUCH AN ASPERSION.

7 WITH REGARD TO EXHIBIT 1 TO THE DECLARATION OF
8 MR. FINKELSTEIN, THAT CONTRACT SAYS NOTHING ABOUT A BREACH
9 OF THE ILWU CONTRACT. IT DOESN'T ANTICIPATE IT AT ALL.

10 WHAT IT TALKS ABOUT IS, YOU SAID YOU WERE GOING TO
11 USE ILWU WORKERS, NOW YOU ARE BEING REQUIRED TO USE OTHER
12 WORKERS. IF IT'S MORE EXPENSIVE, WE WILL REIMBURSE YOU.

13 THE COURT: THE COURT UNDERSTANDS YOUR POINT.

14 MR. GOODMAN, DID YOU HAVE --

15 MR. GOODMAN: YOUR HONOR, MR. FINKELSTEIN POINTS
16 TO THE FACT THAT MR. SANGIACOMO, WHEN ASKED SOME QUESTIONS
17 ABOUT MR. BRASLAW AND MR. BRASLAW'S MEMO, MR. BRASLAW BEING
18 THE CONTROLLER OF NORCAL, AT SOME POINT BECAUSE HE WAS NOT
19 SURE ABOUT SOMETHING WENT OUT AND CONSULTED WITH HIS
20 ATTORNEY, REQUESTED PERMISSION AND IT WAS GRANTED.

21 SO IT STRIKES ME THAT THAT'S -- IT EITHER PROVES
22 NOTHING OR PROVES MY POINT, MY POINT BEING THAT THERE'S
23 SILENCE ON THE ISSUE OF THE PRIVILEGE WAIVER FROM
24 MR. SANGIACOMO. HE ASKED NOTHING ABOUT IT, HE'S INFORMED
25 ABOUT IT IN NO MANNER BY MR. FINKELSTEIN, AND HE DOES NOT
26 SEEK COUNSEL FROM MR. BAKER, WHO IS OUTSIDE.

27 THAT DOES NOT SUGGEST TO ME FROM THAT SILENCE THAT
28 YOU COULD INFER THAT HE WAS KNOWINGLY AND INTELLIGENTLY

SUE HERFURTH, CSR #9645

1168

2 RESPECT TO THE PRIVILEGED CHARACTERISTICS OF THAT DOCUMENT.

3 THE FACT THAT HE GOES OUT AND ASKS HIS LAWYER A
4 QUESTION ABOUT SOMETHING THAT HAD NOTHING TO DO WITH
5 PRIVILEGE, A MEMO THAT WAS WRITTEN BY A CORPORATE EMPLOYEE
6 TO SOMEBODY ELSE THAT DID NOT INVOLVE LAWYERS, STRIKES ME AS
7 HAVING ABSOLUTELY NO PROBATIVE VALUE WHATSOEVER.

8 THE FOREMAN: SOMETHING MORE, MR. CASSMAN?

9 MR. CASSMAN: I APOLOGIZE, YOUR HONOR.

10 MR. GOODMAN'S COMMENT REMINDED ME OF ANOTHER
11 OBSERVATION THAT I WISH TO MAKE. THAT IS, COUNSEL'S
12 ARGUMENT WITH REGARD TO MR. SANGIACOMO'S STEPPING OUT ON ONE
13 OCCASION DURING THE COURSE OF HIS TESTIMONY IS ANOTHER
14 EXAMPLE WHY THE COURT SHOULD GRANT OUR MOTION TO STRIKE
15 AND/OR REQUIRE PRODUCTION OF THE ENTIRE TRANSCRIPT, BECAUSE
16 IT'S MY UNDERSTANDING THAT MR. SANGIACOMO TESTIFIED BEFORE
17 THE GRAND JURY FOR AT LEAST A DAY AND A HALF, HUNDREDS OF
18 PAGES OF TRANSCRIPTS WITHIN OUR OWN EXPERIENCE, EVERYBODY
19 HERE KNOWS THAT. AND SO BY PRESENTING A SHORT LITTLE
20 EXCERPT, ONE WHICH CONTAINS ONE OCCASION ON WHICH
21 MR. SANGIACOMO ASKED TO GO OUT AND TALK TO AN ATTORNEY,
22 COUNSEL PRESENTS THE FALSE REPRESENTATION OR
23 CHARACTERIZATION THAT THIS IS SOMETHING THAT HE WAS DOING ON
24 A REGULAR BASIS, PERHAPS.

25 OBVIOUSLY, IT HAPPENED ONCE DURING THE COURSE OF A
26 DAY AND A HALF. IT DOESN'T SUGGEST ANYTHING TO UNDERMINE
27 THE ASSERTION THAT THERE WAS NO UNDERSTANDING HE COULD DO
28 IT.

SUE HERFURTH, CSR #9645

1 THE COURT: THANK YOU.

2 MR. CASSMAN: THANK YOU.

3 THE COURT: MR. NIERLICH, I ASSUME YOU DO NOT HAVE
4 ANYTHING FURTHER TO ARGUE.

5 MR. NIERLICH: THAT'S CORRECT, YOUR HONOR.

6 THE COURT: WE'RE GOING TO TAKE A FIVE-MINUTE
7 RECESS AT THIS TIME.

8 (A BRIEF RECESS WAS TAKEN.)

9 THE COURT: WE'RE BACK IN SESSION IN THIS GRAND
10 JURY MATTER. THE RECORD WILL SHOW THAT ALL COUNSEL ARE
11 PRESENT.

12 MR. CASSMAN, I HAVE ANOTHER QUESTION THAT MAYBE
13 YOU CAN ANSWER; IF NOT, MAYBE MR. FINKELSTEIN CAN ANSWER.

14 WITH RESPECT TO THE THOMPSON MEMO, IT WAS ARGUED
15 THAT THERE WERE, I BELIEVE, FOUR ATTACHMENTS THAT WERE
16 SUBJECT TO EITHER THE WORK PRODUCT PRIVILEGE OR THE
17 ATTORNEY-CLIENT PRIVILEGE, ONE OF THEM BEING THE JONES MEMO,
18 WHICH WE TALKED A LOT ABOUT.

19 WERE ANY OF THE OTHER THREE OF THOSE ALLEGEDLY
20 PRIVILEGED DOCUMENTS PRODUCED IN THE DOCUMENT PRODUCTION?

21 MR. CASSMAN: YES. THERE WERE TWO. IN FACT, I
22 WOULD REFER THE COURT, IF YOU GIVE ME A MINUTE, TO PAGE FOUR
23 OF OUR MEMORANDUM IN SUPPORT OF THE APPLICATION WHICH WE
24 FILED.

25 IT INDICATES THAT THERE IS FOUR DOCUMENTS. ONE IS
26 A SIX-PAGE MEMORANDUM IN THE FILE. THAT'S THE JONES
27 MEMORANDUM.

28 THE SECOND IS A DRAFT LETTER THAT MR. THOMPSON

1 PREPARED IN NOVEMBER 2001.

2 THE COURT: AND MY QUESTION IS, WERE ANY OF THOSE
3 OTHER THREE DOCUMENTS PRODUCED IN THE DOCUMENT PRODUCTION?

4 MR. CASSMAN: YES. AND WE ARE ASKING FOR THE
5 PROTECTIVE ORDER THAT THEY BE RETURNED.

6 THE COURT: IN ADDITION TO THE THOMPSON MEMO?

7 MR. CASSMAN: THAT'S CORRECT. AND THOSE ARE FOUND
8 ON PAGE FOUR, IDENTIFIED AT PAGE FOUR OF OUR MOVING
9 PAPERS.

10 THE COURT: YOU'RE TELLING ME ALL THREE OF THOSE
11 ADDITIONAL PRIVILEGE DOCUMENTS WERE INCLUDED?

12 MR. CASSMAN: THAT'S CORRECT, YOUR HONOR. THERE
13 WAS A DRAFT LETTER THAT MR. THOMPSON PREPARED IN NOVEMBER
14 2001. THERE WAS A 14-PAGE HOWARD RICE INTEROFFICE
15 MEMORANDUM DATED NOVEMBER 25, 2002; AND A SIX-PAGE HOWARD
16 RICE INTEROFFICE MEMORANDUM DATED MAY 29, 2003.

17 THE COURT: ALL RIGHT. SO THE JONES MEMORANDUM
18 WAS NOT INCLUDED, BUT THE OTHER THREE WERE?

19 MR. CASSMAN: THAT'S CORRECT.

20 THE COURT: THANK YOU.

21 DOES ANY COUNSEL WISH TO SAY ANYTHING FURTHER? IS
22 THE MATTER SUBMITTED?

23 MR. FINKELSTEIN: SUBMITTED, YOUR HONOR.

24 MR. GOODMAN: SUBMITTED, YOUR HONOR.

25 MR. CASSMAN: SUBMITTED, YOUR HONOR.

26 THE COURT: VERY WELL. THANK YOU.

27 A COUPLE OF PRELIMINARY MATTERS.

28 ONE IS THE DISTRICT ATTORNEY'S REQUEST THAT THE

1 COURT TAKE JUDICIAL NOTICE OF THE GRAND JURY REPORT RENDERED
2 LAST YEAR CONCERNING THE MATTERS ABOUT WHICH WE'RE
3 DISCUSSING. THE COURT WILL GRANT THAT REQUEST, AND I WILL
4 TAKE NOTICE OF THE GRAND JURY REPORT.

5 THERE'S ALSO OBJECTIONS BY NORCAL AND HOWARD RICE,
6 SPECIFIC OBJECTIONS TO CERTAIN EVIDENCE. I'M GOING TO DENY
7 THOSE SPECIFIC OBJECTIONS; HOWEVER, THE COURT, BEING MINDFUL
8 OF THE RULES OF EVIDENCE, WILL NOT CONSIDER ANY EVIDENCE
9 WHICH IS NOT ADMISSIBLE.

10 I'M GOING TO MAKE SOME GENERAL FINDINGS, AND THEN
11 I'LL MAKE SOME SPECIFIC FINDINGS.

12 THE GENERAL FINDINGS: DURING ALL TIMES RELEVANT
13 TO THIS HEARING, NORCAL WAS A CLIENT OF HOWARD RICE.

14 SECOND, THE AUTHOR OF WHAT'S BEEN REFERRED TO AS
15 THE THOMPSON MEMO IS AN ATTORNEY AT LAW, AND WAS AT THE TIME
16 THE MEMO WAS AUTHORED AN EMPLOYEE, AN ATTORNEY AT HOWARD
17 RICE.

18 I'LL ALSO FIND THAT KPMG IS THE AUDITOR OF NORCAL,
19 WAS AT THE TIME RELEVANT TO THIS HEARING AND CONTINUES TO
20 BE, AS FAR AS THE COURT KNOWS.

21 AND FINALLY, I'LL FIND THAT BILL JONES IS A FORMER
22 EMPLOYEE OF NORCAL, BUT AT THE TIME OF THE INTERVIEW WHICH
23 IS THE SUBJECT OF THE JONES MEMO, HE WAS NO LONGER EMPLOYED
24 BY NORCAL.

25 NOW, WITH RESPECT TO THE THOMPSON MEMO, I'M GOING
26 TO FIND THAT THE PRIVILEGES WERE WAIVED BY THE MEMO'S

27 DISCLOSURE. IN MAKING THAT FINDING, I'M GOING TO FIND THAT
28 THE DISCLOSURE WAS NOT INADVERTENT.

SUE HERFURTH, CSR #9645

1172

1 ALSO, I WILL ADD WITH RESPECT TO THAT FINDING THAT
2 I DO NOT INTEND IN ANY WAY BY THIS FINDING TO Demean OR TO
3 FIND THAT THERE IS A LACK OF INTEGRITY ON THE PART OF ANY OF
4 THE DECLARANTS IN THE DECLARATIONS THAT WERE PRESENTED TO
5 THE COURT.

6 IN ADDITION, I'M GOING TO FIND THAT THE
7 ATTORNEY-CLIENT PRIVILEGE WAS WAIVED WITH RESPECT TO THAT
8 MEMO BY THE TESTIMONY OF THE CEO BEFORE THE GRAND JURY, AT
9 LEAST INSOFAR AS HIS CONVERSATIONS WITH THE ATTORNEY ARE
10 CONCERNED OR CONVERSATIONS OF OTHER EMPLOYEES OF NORCAL.

11 WITH RESPECT TO THE TWO BAKER LETTERS, I WILL FIND
12 THAT THOSE COMMUNICATIONS CONSTITUTED COMMUNICATIONS FROM
13 ATTORNEY TO CLIENT, THAT THEY ARE SUBJECT TO THE
14 ATTORNEY-CLIENT PRIVILEGE. THEY ARE ALSO SUBJECT TO THE
15 WORK PRODUCT PRIVILEGE.

16 I'M GOING TO FIND THAT THERE'S AN INSUFFICIENT
17 SHOWING TO CONSTITUTE A PRIMA FACIE PROOF TO SUPPORT THE
18 CRIME FRAUD EXCEPTION.

19 WITH RESPECT TO THE REDACTED DOCUMENT, IT APPEARS
20 TO THE COURT AND I'LL FIND THAT THE REDACTED PORTIONS
21 PERTAIN TO ATTORNEY-CLIENT PRIVILEGED INFORMATION AND
22 INCLUDE ATTORNEY-CLIENT OR ATTORNEY WORK PRODUCT.

23 I'LL FIND THAT THERE IS AN INSUFFICIENT SHOWING TO
24 CONSTITUTE A PRIMA FACIE PROOF TO SUPPORT THE CRIME FRAUD

25 EXCEPTION WITH RESPECT TO THAT DOCUMENT.

26 AND WITH RESPECT TO THE JONES MEMO, I'M GOING TO
27 FIND THAT THE STATEMENTS OF MR. JONES AS RECITED IN THAT
28 MEMO ARE MATERIAL, THEY CONTAIN MATERIAL OF A NONDERIVATIVE

SUE HERFURTH, CSR #9645

1173

1 OR NONINTERPRETIVE NATURE; THEREFORE, THEY ARE, AT LEAST
2 THOSE STATEMENTS ARE NOT SUBJECT TO THE WORK PRODUCT
3 PRIVILEGE.

4 BASED UPON THESE FINDINGS, I'M GOING TO DENY THE
5 NORCAL AND HOWARD RICE MOTIONS FOR RETURN OF THE THOMPSON
6 MEMO.

7 I'M GOING TO DENY THE DISTRICT ATTORNEY'S MOTION
8 FOR PRODUCTION OF THE BAKER LETTERS.

9 I'M GOING TO DENY THE DISTRICT ATTORNEY'S MOTION
10 FOR THE REDACTED PORTIONS OF THE KPMG DOCUMENT THAT'S BATES
11 STAMPED 00023 -- I'M SORRY, 000-238-239.

12 I'M GOING TO GRANT THE DISTRICT ATTORNEY'S MOTION
13 FOR PRODUCTION OF THE JONES MEMO, WITH THE PROVISION THAT
14 THE LAST TWO SENTENCES OF THE FIRST PARAGRAPH MAY BE
15 REDACTED. AND THE MATERIAL THAT'S NONRESPONSIVE TO THE
16 SUBPOENA STARTING IN ABOUT THE MIDDLE OF PAGE FOUR OF THAT
17 DOCUMENT AND THEREAFTER WILL BE REDACTED.

18 I'LL INSTRUCT COUNSEL FOR HOWARD RICE TO -- WHAT'S
19 THE BEST WAY, SUBMIT IT TO THE COURT TO LOOK AT BEFORE IT
20 GOES TO COUNSEL?

21 MR. FINKELSTEIN: THAT'S FINE, YOUR HONOR.

22 THE COURT: THAT WOULD BE THE COURT'S INSTRUCTION.

23 MR. FINKELSTEIN: I WOULD ASK THAT THEY SUBMIT
24 BOTH REDACTED AND NONREDACTED VERSIONS TO THE COURT SO THE
25 COURT COULD BE COMFORTABLE THAT THE REDACTION WAS DONE
26 CORRECTLY.

27 THE COURT: IS THAT SATISFACTORY?

28 MR. CASSMAN: FINE. I WOULD ASK THAT THE COURT

SUE HERFURTH, CSR #9645

1174

1 RETURN THE UNREDACTED VERSION AFTERWARDS.

2 MR. FINKELSTEIN: NO OBJECTION.

3 THE COURT: VERY WELL.

4 ALL RIGHT. THOSE ARE THE COURT'S FINDINGS AND
5 ORDERS. ANY QUESTIONS, ANY NEED FOR CLARIFICATION? IS
6 EVERYTHING CLEAR?

7 MR. CASSMAN: ONE MOMENT, YOUR HONOR.

8 MR. GOODMAN: COULD WE HAVE ONE SECOND?

9 THE COURT: YOU MAY.

10 MR. GOODMAN: NEVER MIND.

11 MR. CASSMAN: YOUR HONOR, IN VIEW OF THE COURT'S
12 RULING, WE WOULD MAKE TWO REQUESTS.

13 ONE IS ASKING THE COURT AND MR. FINKELSTEIN
14 PERHAPS TO REVISIT AN ISSUE WITH REGARD TO THE THOMPSON
15 MEMORANDUM. IT CONTAINS NUMEROUS DISCUSSIONS OF SUBJECT
16 MATTERS WHICH ARE ALSO, AS I WAS POINTING OUT IN MY
17 ARGUMENT, NONRESPONSIVE TO THE SUBPOENA AND APPARENTLY
18 IRRELEVANT TO THE DISTRICT ATTORNEY'S INQUIRY.

19 SO, GIVEN THE COURT'S ORDER, AND IN VIEW OF THE
20 FACT THIS IS THE PORTION, APPARENTLY, THAT THE DISTRICT

21 ATTORNEY IS INTERESTED IN, WE WOULD REQUEST THAT ONLY THAT
22 PORTION BE MAINTAINED BY THE DISTRICT ATTORNEY AND THAT THE
23 REST OF THE MEMORANDUM AND ATTACHMENTS THAT ARE RELEVANT TO
24 HIS INQUIRY BE RETURNED.

25 THE COURT: MR. FINKELSTEIN?

26 MR. FINKELSTEIN: WELL, THE WAY I UNDERSTAND THE
27 WAY THE PROCESS WORKS WITH REGARD TO SUBPOENAS IS THAT YOU
28 CAN REDACT PRIVILEGED MATERIAL, BUT IF ANY PORTION OF THE

SUE HERFURTH, CSR #9645

1175

1 DOCUMENT IS RESPONSIVE, YOU DON'T GET TO REDACT THE REST OF
2 IT OR THE CONTEXT MERELY BECAUSE IT'S NONRESPONSIVE.

3 THERE'S A DIFFERENCE IN DEALING WITH PRIVILEGE
4 ISSUES AND PROTECTED PRIVILEGES VERSUS WHAT'S RESPONSIVE.
5 IF ANY PORTION OF THE DOCUMENT IS RESPONSIVE TO THE
6 SUBPOENA, THAT DOCUMENT IS RESPONSIVE. AND I DON'T BELIEVE
7 THE SUBPOENAED PARTY HAS THE RIGHT TO REDACT ON A
8 NONPRIVILEGED BASIS JUST BECAUSE PORTIONS ARE
9 NONRESPONSIVE.

10 THE COURT: IN VIEW OF THE FACT THAT THE DOCUMENT
11 HAS ALREADY BEEN MARKED AS AN EXHIBIT BEFORE THE GRAND JURY
12 AND IT'S ALREADY BEEN PRESENTED TO AT LEAST ONE WITNESS, IF
13 NOT MORE, I'LL DENY THE REQUEST TO REDACT THE THOMPSON MEMO;
14 HOWEVER, MY ORDERS STILL STAND WITH RESPECT TO THE
15 REDACTIONS ON THE JONES MEMO WITH RESPECT TO THE
16 NONRESPONSIVE MATERIAL.

17 ANYTHING FURTHER?

18 THANK YOU ALL FOR YOUR GOOD BRIEFING. IT WAS VERY

19 WELL DONE EXCEPT FOR THE BARBS YOU OCCASIONALLY THREW AT
20 OPPOSING COUNSEL, WHICH OF COURSE THE COURT DOESN'T
21 APPRECIATE, BUT I DO APPRECIATE THE GOOD BRIEFING.
22 THANK YOU VERY MUCH.
23 MR. FINKELSTEIN: THANK YOU VERY MUCH, YOUR HONOR.
24
25
26
27
28

SUE HERFURTH, CSR #9645

1176

1 SAN JOSE, CALIFORNIA APRIL 6, 2006
2
3 AFTERNOON SESSION:
4 (THE FOLLOWING PROCEEDINGS TOOK PLACE IN THE
5 PRESENCE OF THE GRAND JURY.)
6 CINDY CHAVEZ,
7 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
8 AS FOLLOWS:
9 THE WITNESS: I DO.
10 EXAMINATION:
11 BY MR. FINKELSTEIN:
12 Q. GOOD AFTERNOON. COULD YOU PLEASE TELL US YOUR FULL
13 NAME?
14 A. CYNTHIA MARIE CHAVEZ.
15 Q. COULD YOU SPELL YOUR NAME FOR THE REPORTER?
16 A. C-Y-N-T-H-I-A, M-A-R-I-E, C-H-A-V-E-Z.

17 Q. THANK YOU. BEFORE STARTING THE QUESTIONING, I HAVE
18 TO ADVISE YOU OF CERTAIN MATTERS, SO PLEASE LISTEN
19 CAREFULLY.

20 THE GRAND JURY IS INVESTIGATING THE FOLLOWING
21 SUBJECTS:

22 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
23 APPROVED OF THE SELECTION OF NORCAL WASTE SYSTEMS OF
24 SAN JOSE, INC., ALSO KNOWN AS NORCAL, TO PROVIDE FOR THE
25 COLLECTION OF RESIDENTIAL WASTE AND RECYCLING MATERIALS.

26 WHAT SAN JOSE CITY OFFICIALS KNEW ABOUT INCREASES
27 IN COSTS THAT MIGHT ARISE FROM THE EMPLOYMENT OF TEAMSTERS
28 TO DO RECYCLING WORK FOR NORCAL'S SUBCONTRACTOR, CWS.

SUE HERFURTH, CSR #9645

1177

1 WHEN SAN JOSE CITY OFFICIALS FIRST LEARNED ABOUT
2 SUCH INCREASED COSTS.

3 WHY SAN JOSE CITY OFFICIALS GAVE SECRET ASSURANCES
4 TO NORCAL THAT ADDITIONAL COSTS ARISING FROM THE USE OF
5 TEAMSTERS BY CWS WHICH WERE NOT INCLUDED IN THE ORIGINAL
6 AGREEMENT WITH NORCAL WOULD NONETHELESS BE PAID FOR BY THE
7 CITY OF SAN JOSE.

8 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
9 APPROVED A RATE HIKE IN THE RECYCLE PLUS SERVICE RATES IN
10 MAY OF 2003 TO PAY FOR THESE ADDITIONAL COSTS.

11 WHETHER SAN JOSE CITY OFFICIALS MISLED THE PUBLIC
12 ABOUT THE TRUE REASONS FOR THE RATE HIKE.

13 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
14 APPROVED A CONTRACT AMENDMENT TO THE NORCAL AGREEMENT IN

15 2004 TO PAY FOR ADDITIONAL COSTS DUE TO THE USE OF TEAMSTERS
16 BY CWS.

17 WHETHER ANYTHING WAS GIVEN OR PROMISED TO SAN JOSE
18 CITY OFFICIALS AS AN INDUCEMENT TO TAKE ANY OF THESE
19 ACTIONS.

20 YOU ARE A SUBJECT OF THE GRAND JURY' S
21 INVESTIGATION, AND BY THAT I SIMPLY MEAN THAT YOU' RE A
22 PERSON WHOSE CONDUCT IS WITHIN THE SCOPE OF THE MATTERS THAT
23 I JUST READ TO YOU.

24 I' M NOT IMPLYING OR SUGGESTING ANYTHING SINISTER
25 OR IMPROPER. I' M POINTING OUT THAT AS A SAN JOSE CITY
26 OFFICIAL, GIVEN THE NATURE OF THE INVESTIGATION, YOU' RE A
27 SUBJECT OF THE INVESTIGATION.

28 YOU HAVE THE RIGHT TO REFUSE ANY QUESTION IF A

SUE HERFURTH, CSR #9645

1178

1 TRUTHFUL ANSWER TO THE QUESTION WOULD TEND TO INCRIMINATE
2 YOU.

3 ANYTHING YOU DO OR SAY MAY BE USED AGAINST YOU BY
4 THE GRAND JURY OR IN A SUBSEQUENT LEGAL PROCEEDING.

5 IF YOU HAVE RETAINED COUNSEL, THE GRAND JURY WILL
6 PERMIT YOU REASONABLE OPPORTUNITY TO STEP OUTSIDE THE GRAND
7 JURY ROOM AT ANY TIME TO CONSULT WITH COUNSEL IF YOU SO
8 DESIRE.

9 DO YOU UNDERSTAND EVERYTHING I HAVE JUST TOLD YOU?

10 A. I DO. I CAN'T REPEAT IT BACK TO YOU, I MEAN, THE
11 LONGER LIST, BUT I ABSOLUTELY UNDERSTAND IT.

12 Q. DO YOU HAVE ANY QUESTIONS?

- 13 A. NO, I DO NOT.
- 14 Q. WHY DON' T WE BEGIN, THEN.
- 15 WHEN WERE YOU FIRST ELECTED TO THE SAN JOSE CITY
- 16 COUNCIL?
- 17 A. IN 1998, BUT MY TERM BEGAN IN DECEMBER OF 1999.
- 18 Q. WHEN DOES YOUR CURRENT TERM EXPIRE?
- 19 A. IN ABOUT SEVEN MONTHS. IN DECEMBER OF THIS YEAR.
- 20 Q. IF YOU COULD TRY ADJUSTING THE MICROPHONE A LITTLE
- 21 BIT CLOSER TO YOU; I' M HAVING TROUBLE HEARING YOU.
- 22 IN THE YEAR 2000, DID THE CITY OF SAN JOSE ISSUE
- 23 AN RFP FOR RECYCLE PLUS SERVICES?
- 24 A. 2000 OR 1999, YES.
- 25 Q. NOW, WERE YOU, DID YOU PARTICIPATE IN THE
- 26 DEVELOPMENT OF THAT RFP?
- 27 A. I DID.
- 28 Q. AND THAT WAS A FAIRLY LENGTHY PROCESS THAT THE CITY

SUE HERFURTH, CSR #9645

1179

- 1 WENT THROUGH TO DEVELOP THAT RFP?
- 2 A. YES.
- 3 Q. COULD YOU DESCRIBE IT BRIEFLY FOR US?
- 4 A. UH -- A LOT OF VERY LONG MEETINGS ABOUT EVERYTHING,
- 5 FROM THINGS THAT I WAS CONCERNED ABOUT, LIKE LABOR PEACE AND
- 6 WORKER RETENTION, TO WHETHER OR NOT YOU PUT BINS ON THE
- 7 STREET OR LEAVE GRASS ON THE STREET, AND THOSE WERE VERY
- 8 LONG CONVERSATIONS.
- 9 Q. DID IT TAKE MORE THAN A YEAR OF MEETINGS AND
- 10 DISCUSSIONS TO DEVELOP THE FINAL RFP?

11 A. YOU KNOW, I DON'T RECALL THE EXACT AMOUNT OF TIME,
12 BUT IT WAS A LOT OF HOURS.

13 Q. WERE YOU SATISFIED AT THE END OF THAT PROCESS THAT
14 THE RFP THAT WAS RELEASED INCLUDED EVERYTHING THAT IT SHOULD
15 HAVE INCLUDED TO ENSURE AND MEET ALL OF THE CITY'S GOALS
16 WITH RESPECT TO THE SERVICES AT THE TIME?

17 A. UH, IN GENERAL I WOULD SAY YES, WITH ONE EXCEPTION
18 THAT I WAS CONCERNED ABOUT, AND THAT WAS THE MRF WORKERS,
19 THE PEOPLE WHO ACTUALLY COLLECTED THE RECYCLING, BECAUSE IT
20 WAS UNCLEAR TO ME HOW THEIR WAGES WOULD BE CALCULATED,
21 WHETHER OR NOT THEY WERE GETTING PREVAILING WAGE OR LIVING
22 WAGE. I WAS FAIRLY NEW ON THE COUNCIL, SO THE WHOLE RFP
23 PROCESS WAS NEW TO ME IN TERMS OF DEVELOPING, SO I WAS
24 PROBABLY A LITTLE UNSURE ABOUT IT.

25 Q. DID YOU VOTE IN FAVOR OF THE FINAL RFP?

26 A. I DID.

27 Q. WITH REGARD TO THE MRF WORKERS, DID YOU HAVE AN
28 UNDERSTANDING ONE WAY OR THE OTHER WHETHER OR NOT THEY CAME

SUE HERFURTH, CSR #9645

1180

1 WITHIN THE THEN EXISTING PREVAILING WAGE ORDINANCE?

2 A. THE ANSWER TO THAT IS YES, THAT THEY DID NOT,
3 ACCORDING TO THE CITY ATTORNEY AND TO NINA GRAYSON.

4 Q. CAN YOU SPELL THAT PERSON'S NAME?

5 A. G-R-A-Y-S-O-N.

6 Q. OH, GRAYSON DID YOU SAY?

7 A. YES.

8 Q. ISN'T IT NINA GRAYSON?

- 9 A. YES, I SAID NINA -- I'LL TRY TO SPEAK MORE CLEARLY.
- 10 Q. IT WAS CLEAR NOW THAT THE MRF WORKERS WERE NOT
- 11 COVERED BY THE CITY'S THEN EXISTING PREVAILING WAGE
- 12 ORDINANCE?
- 13 A. CORRECT.
- 14 Q. YOU SAID ACCORDING TO THE CITY ATTORNEY AND NINA
- 15 GRAYSON, RIGHT?
- 16 A. CORRECT.
- 17 Q. DID SHE BRIEF THE COUNCIL ON THAT ISSUE AT SOME
- 18 POINT?
- 19 A. SHE DID.
- 20 Q. SO THAT WOULD HAVE INCLUDED MAYOR GONZALES, I TAKE
- 21 IT?
- 22 A. THE ENTIRE COUNCIL. I DON'T KNOW IF ANYONE MISSED
- 23 THE MEETING, BUT THE PRESENTATION WAS TO THE FULL CITY
- 24 COUNCIL.
- 25 Q. WHEN DID THE MEETING TAKE PLACE?
- 26 A. I DON'T RECALL THE DATE.
- 27 Q. WAS IT BEFORE OR AFTER THE RFP WAS RELEASED?
- 28 A. IT WAS PROBABLY -- I DON'T RECALL. IT MIGHT HAVE

SUE HERFURTH, CSR #9645

1181

- 1 ACTUALLY BEEN AFTER THE RFP WAS RELEASED, BECAUSE THE
- 2 COUNCIL, AND AS A NEW COUNCILMEMBER I REMEMBER IT BEING A
- 3 FEAR OF MINE IS THE WHOLE TRANSITION PROCESS OF PUTTING NEW
- 4 CONTRACTORS IN PLACE. SO I KNOW WE HAD A SERIES OF MEETINGS
- 5 ON THE TRANSITION, SO I DON'T KNOW IF IT WAS JUST AS PART OF
- 6 THE TRANSITION OR PRIOR TO THE RFP BEING RELEASED.

7 Q. DID THE MAYOR HAVE AUTHORITY WITHOUT CITY COUNCIL
8 APPROVAL TO IMPOSE REQUIREMENTS ON COMPANIES SUBMITTING
9 PROPOSALS THAT WERE NOT CONTAINED IN THE RFP?

10 A. NO.

11 Q. WAS THERE ANY REQUIREMENT IN THE RFP THAT COMPANIES
12 SUBMITTING PROPOSALS RECOGNIZED THE SAME UNIONS THAT HAD
13 BEEN RECOGNIZED BY THE EXISTING CONTRACTORS?

14 A. NO.

15 Q. WAS THERE ANY REQUIREMENT IN THE RFP THAT COMPANIES
16 SUBMITTING PROPOSALS AGREE TO BE BOUND BY EXISTING
17 COLLECTIVE BARGAINING AGREEMENTS IN PLACE WITH EXISTING
18 CONTRACTORS?

19 A. NO.

20 Q. WAS THERE ANY REQUIREMENT IN THE RFP THAT COMPANIES
21 SUBMITTING PROPOSALS USE TEAMSTERS?

22 A. NO.

23 Q. DO YOU KNOW WHETHER OR NOT THE CITY COULD HAVE
24 REQUIRED COMPANIES SUBMITTING PROPOSALS TO USE TEAMSTERS?

25 A. WE COULD NOT.

26 Q. WHY DO YOU SAY THAT?

27 A. IT'S NOT WITHIN THE PURVIEW OF ANY GOVERNMENTAL
28 ENTITY TO TELL WORKERS WHAT UNION TO HAVE.

SUE HERFURTH, CSR #9645

1182

1 Q. OKAY. YOU UNDERSTOOD THAT?

2 A. I WORKED FOR THE LABOR MOVEMENT PRIOR, SO I
3 UNDERSTOOD THAT PAINFULLY WELL.

4 Q. DID YOU BELIEVE THAT ANY ATTEMPT TO DO SO MIGHT BE
Page 180

5 A VIOLATION OF FEDERAL LABOR LAW?

6 WHILE I PROBABLY KNEW THAT, MY BIGGER CONCERN WAS
7 THAT PRIOR TO COMING TO EVEN THE SOUTH BAY LABOR COUNCIL, I
8 WORKED FOR AN ORGANIZATION CALLED ORGANIZING INSTITUTE.
9 THAT IS A PART OF THE NATIONAL AFL/CIO. THEY TRAINED UNIONS
10 ON ORGANIZING. THERE WERE MANY TIMES UNIONS HAD DISPUTES.
11 THE AFL/CIO HAS PROCESSES FOR THOSE DISPUTES TO BE DEALT
12 WITH OUTSIDE OF THE NLRB. IT COULD GO WITH THE LABOR
13 MOVEMENT OR WITH THE NATIONAL LABOR RELATIONS BOARD. IT
14 DEPENDS ON THE UNIONS AS TO WHAT THE PROCESS WOULD BE.

15 Q. WHAT DID YOU DO BEFORE BEING ELECTED TO CITY
16 COUNCIL?

17 A. I WAS THE DIRECTOR OF EDUCATION OUTREACH FOR SOUTH
18 BAY AFL/CIO LABOR COUNCIL. AND BEFORE THAT I WORKED FOR THE
19 ORGANIZING INSTITUTE.

20 Q. DO YOU KNOW SOMEONE NAMED AMY DEAN?

21 A. VERY WELL.

22 Q. AND WHO IS AMY DEAN?

23 A. SHE WAS THE HEAD OF THE LABOR COUNCIL WHEN I WAS
24 THE DIRECTOR OF EDUCATION OUTREACH.

25 Q. WHAT IS THE SOUTH BAY LABOR COUNCIL?

26 A. IT'S AN UMBRELLA ORGANIZATION FOR ALL LOCAL UNIONS
27 THAT ARE PART OF THE INTERNATIONAL AFL/CIO AS IT WAS THEN.

28 Q. AND SO THAT WOULD INCLUDE THE TEAMSTERS?

SUE HERFURTH, CSR #9645

1183

1 A. YES. I'M SURE THE TEAMSTERS WERE MEMBERS.

2 Q. AND BACK IN 2000, THAT WOULD HAVE INCLUDED ILWU
Page 181

3 WORKERS?

4 A. I DON'T KNOW FOR CERTAIN, BUT MY ASSUMPTION WOULD
5 BE YES.

6 Q. GENERALLY SPEAKING, THE NUMBERS OF TEAMSTERS WITHIN
7 THE SOUTH BAY LABOR COUNCIL VERSUS THE NUMBER OF
8 LONGSHOREMEN, HOW WOULD YOU COMPARE THOSE NUMBERS?

9 A. I DON'T KNOW THAT OFF THE TOP OF MY HEAD. I
10 IMAGINE THE ILWU WOULD BE SMALLER BECAUSE MOST OF THEIR
11 BASIC WORKERS ARE PORT WORKERS.

12 Q. THEY ALSO INCLUDE WAREHOUSEMEN?

13 A. THEY DO?

14 Q. CORRECT. DID NORCAL SUBMIT A PROPOSAL IN RESPONSE
15 TO THE RFP?

16 A. THEY DID.

17 Q. DID THE NORCAL PROPOSAL INCLUDE USING A
18 SUBCONTRACTOR, CALIFORNIA WASTE SOLUTIONS, OR CWS, TO SORT
19 THE RECYCLABLES?

20 A. THEY DID.

21 Q. DO YOU RECALL WHETHER OR NOT THE NORCAL PROPOSAL
22 INDICATED THAT CWS WAS GOING TO USE ILWU WORKERS PURSUANT TO
23 AN EXISTING COLLECTIVE BARGAINING AGREEMENT?

24 A. YES, I DO.

25 Q. WHAT'S THE ANSWER? I ASKED YOU IF YOU RECALL THAT.

26 A. I DO.

27 Q. WHAT'S THE ANSWER? DID THEY INDICATE THEY WERE
28 GOING TO USE ILWU WORKERS PURSUANT TO THEIR EXISTING

SUE HERFURTH, CSR #9645

1184

1 COLLECTIVE BARGAINING AGREEMENT?

2 A. YES.

3 Q. NOW, DO YOU RECALL THAT IN THE FALL OF 2000, ON
4 SEPTEMBER 22, 2000 TO BE PRECISE, CARL MOSHER, THE HEAD OF
5 ESD, OR THE ENVIRONMENTAL SERVICES DEPARTMENT, PREPARED A
6 MEMO TO THE MAYOR AND CITY COUNCIL REGARDING THE SELECTION
7 OF RECYCLE PLUS SERVICE CONTRACTORS?

8 A. NO.

9 Q. YOU DON'T RECALL THAT?

10 A. I MEAN, I DON'T RECALL THAT PARTICULAR ACTION ON
11 THAT PARTICULAR DAY.

12 Q. OKAY. LET ME SHOW YOU GRAND JURY EXHIBIT 5. TAKE
13 A LOOK AT THAT.

14 A. THANK YOU.

15 Q. SURE. HAVE YOU SEEN THAT DOCUMENT BEFORE?

16 A. YEAH.

17 Q. WHAT IS IT?

18 A. IT'S THE RECOMMENDATION FROM OUR STAFF AS TO WHO
19 SHOULD BE CHOSEN FOR WHAT DISTRICTS FOR THE RECYCLE PLUS
20 CONTRACT.

21 Q. RIGHT, AND IT'S DATED SEPTEMBER 22, 2000?

22 A. YES.

23 Q. YOU NEED TO SORT OF PAUSE A MOMENT BEFORE
24 ANSWERING. THE REPORTER CAN ONLY TAKE ONE OF US AT A TIME.
25 AND THE MEMO IS FROM CARL MOSHER, IS THAT RIGHT?

26 A. CORRECT.

27 Q. AT THE TIME HE WAS HEAD OF ESD?

28 A. CORRECT.

1 Q. WAS THERE ANYTHING IN THE MEMO -- THE MEMO
2 RECOMMENDS NORCAL AS ONE OF THE VENDORS THAT SHOULD RECEIVE
3 A CONTRACT FROM THE CITY?

4 A. CORRECT.

5 Q. WAS THERE ANYTHING IN THE ESD RECOMMENDATION ABOUT
6 CWS SWITCHING FROM ILWU WORKERS TO TEAMSTERS?

7 A. I DON'T RECALL.

8 Q. DO YOU WANT TO TAKE A MOMENT AND JUST LOOK AT IT
9 AND SEE IF YOU CAN LOCATE ANYTHING ON THAT ISSUE.

10 A. COULD YOU ASK ME THE QUESTION AGAIN?

11 Q. SURE. IS THERE ANYTHING IN THE ESD RECOMMENDATION
12 CONTAINED IN CARL MOSHER'S SEPTEMBER 22 MEMO ABOUT CWS
13 SWITCHING FROM ILWU WORKERS TO TEAMSTERS?

14 A. NOT THAT I'VE LOCATED.

15 Q. OKAY. IS THERE ANYTHING THAT IDENTIFIES ANY
16 PROBLEM WITH CWS USING ILWU WORKERS AS OPPOSED TO SOME OTHER
17 UNION?

18 A. NO, NOT THAT I'VE LOCATED.

19 Q. AS A MATTER OF FACT, DOESN'T THE MEMO INDICATE IN
20 ITS SUMMARY OF PROPOSALS THAT CWS IS GOING TO BE USING ILWU
21 WORKERS PURSUANT TO AN EXISTING COLLECTIVE BARGAINING
22 AGREEMENT?

23 A. I DIDN'T LOCATE THAT.

24 Q. I THINK IT'S IN ATTACHMENT D. THERE ARE A BUNCH OF
25 ATTACHMENT DS WHICH GO THROUGH PROPOSALS AND VENDOR --

26 A. I SEE. YOU SHOULD HAVE TOLD ME THAT EARLIER. YES,
27 IT DOES ACKNOWLEDGE THAT THERE WILL BE NO UNION TRANSITION
28 REQUIRED.

1 Q. DOES IT SAY ANYTHING ABOUT CWS HAVING EXISTING
2 COLLECTIVE BARGAINING AGREEMENTS WITH ILWU?

3 A. YES.

4 Q. WHAT DOES IT SAY?

5 A. CWS MAINTAINS AN AGREEMENT WITH ILWU LOCAL 6 FOR
6 ITS OAKLAND OPERATION.

7 Q. DOES IT INDICATE THAT AGREEMENT WILL BE APPLIED TO
8 THE SAN JOSE OPERATION?

9 A. IT DOESN'T SAY THAT SPECIFICALLY, BUT IT DOES SAY
10 THERE WILL BE NO -- SAYS IT WILL BE AUGMENTED TO INCLUDE
11 SAN JOSE BURKE STREET FACILITY. SO, YES, IT DOES.

12 Q. IT WAS CLEAR ANYONE READING THE SEPTEMBER 22, 2000
13 STAFF RECOMMENDATION WHO GOT TO THAT PAGE OF THE DOCUMENT
14 WOULD UNDERSTAND THAT THERE WAS AN EXISTING COLLECTIVE
15 BARGAINING AGREEMENT IN PLACE BETWEEN CWS AND ILWU WHICH
16 WOULD BE EXTENDED TO COVER THE SAN JOSE OPERATION. THAT IS
17 PROPOSED IN THE PROPOSAL, CORRECT?

18 A. THAT'S CORRECT.

19 Q. IS THERE ANYTHING IN THE STAFF RECOMMENDATION OF
20 SEPTEMBER 22, 2000 ABOUT HAVING THE CITY AUDITOR REVIEW
21 NORCAL'S PROPOSAL?

22 A. I DID NOT SEE IT IN THIS DOCUMENT, BUT --

23 Q. THAT'S THE DOCUMENT WE'RE CONCERNED ABOUT.

24 A. I DIDN'T SEE IT IN THIS DOCUMENT.

25 Q. I UNDERSTAND THERE ARE OTHER DOCUMENTS IN THE CASE.
26 LET'S STAY WITH THIS FOR A MOMENT.

27 IN THE STAFF RECOMMENDATION, APPARENTLY STAFF DID

28 NOT THINK THERE WAS A NEED FOR ANY REVIEW BY THE AUDITOR; IS

SUE HERFURTH, CSR #9645

1187

1 THAT CORRECT?

2 A. I DON'T KNOW THE ANSWER TO THAT.

3 Q. WELL, DID THEY MAKE ANY SUCH RECOMMENDATION?

4 A. I DID.

5 Q. SORRY?

6 A. IT WAS MY RECOMMENDATION.

7 Q. I UNDERSTAND, BUT I'M ASKING ABOUT THE STAFF
8 RECOMMENDATION.

9 A. THERE IS NOTHING IN THIS DOCUMENT TO REFLECT ANY
10 NEED FOR THE AUDITOR.

11 Q. THANK YOU. NOW, DID MAYOR GONZALES RECOMMEND THE
12 SELECTION OF NORCAL AS ONE OF THE RECYCLE PLUS SERVICE
13 PROVIDERS IN THAT MEMO TO THE CITY COUNCIL PRIOR TO THE
14 FIRST VOTE?

15 A. I DON'T RECALL.

16 Q. OKAY. LET ME HAVE YOU LOOK AT EXHIBIT 14, IF YOU
17 WOULD.

18 A. THANK YOU.

19 Q. SURE. HAVE YOU SEEN EXHIBIT 14 BEFORE?

20 A. I HAVE.

21 Q. WHAT IS EXHIBIT 14?

22 A. A MEMORANDUM FROM MAYOR GONZALES, VICE MAYOR FRANK
23 FISCALINI, AND MYSELF, COUNCILMEMBER CHAVEZ, DANDO, AND
24 POWERS.

25 Q. IT'S DATED OCTOBER 8, 2000?

26 A. CORRECT.
27 Q. DO YOU RECOGNIZE ANY OF THE INITIALS ON THE MEMO?
28 A. YES.

SUE HERFURTH, CSR #9645

1188

1 Q. WHICH ONE DO YOU RECOGNIZE?
2 A. WELL, THE ONLY WAY -- I MEAN, IN TERMS OF HOW
3 PEOPLE SIGN MEMOS?
4 Q. WHICH ARE YOUR INITIALS?
5 A. C. C.
6 Q. DO YOU KNOW AT WHOSE REQUEST THIS MEMO WAS
7 PREPARED?
8 A. I DO NOT.
9 Q. DO YOU KNOW WHO PREPARED THE MEMO?
10 A. MY RECOLLECTION IS THIS WAS PREPARED BY THE MAYOR'S
11 OFFICE.
12 Q. DO YOU KNOW WHO IN THE MAYOR'S OFFICE MIGHT HAVE
13 PREPARED THIS?
14 A. MY RECOLLECTION IS THAT IT WOULD HAVE BEEN, I
15 TALKED TO JOE GUERRA ABOUT IT. I DON'T KNOW IF HE ACTUALLY
16 WROTE IT, BUT THAT'S WHO I SPOKE TO.
17 Q. DO YOU KNOW WHY THIS MEMO WAS PREPARED, WHAT THE
18 PURPOSE OF IT WAS?
19 A. OFTEN WHEN THERE'S A BIG DECISION TO BE MADE AND
20 PEOPLE HAVE A LOT OF OPINIONS ABOUT IT, THE MAYOR OR SOME
21 OTHER COUNCILMEMBER WILL PULL TOGETHER A FEW PEOPLE TO TRY
22 TO RESPOND TO THE ISSUE AT HAND, AND I IMAGINE THAT'S
23 BECAUSE WE HAD SO MANY QUESTIONS.

24 I DON' T REMEMBER WHAT MEETING WE HAD RIGHT BEFORE
25 THIS, BUT AT A LOT OF THE MEETINGS I PARTICIPATED IN, THERE
26 WERE A LOT OF DIFFERENT CONCERNS AND ISSUES RAISED.

27 Q. DO YOU REMEMBER WHEN IT WAS YOU FIRST SAW THIS
28 MEMO?

SUE HERFURTH, CSR #9645

1189

1 A. I DO NOT.

2 Q. DID YOU SEE IT IN DRAFT FORM BEFORE THIS CURRENT
3 FORM?

4 A. I DON' T RECALL, BUT -- I DON' T RECALL.

5 Q. OKAY. DID YOU INITIAL IT ON OCTOBER 8?

6 A. I DON' T RECALL.

7 Q. OKAY. DID YOU, I TAKE IT YOU INITIALED IT BEFORE
8 THE TUESDAY OCTOBER 10, 2000 FIRST VOTE ON THE NORCAL
9 PROPOSAL, CORRECT?

10 A. THAT WOULD BE MY ASSUMPTION.

11 Q. WELL, THIS MEMO WAS SUBMITTED TO THE CITY COUNCIL,
12 WAS IT NOT?

13 A. YES.

14 Q. SO YOU WOULD HAVE HAD TO HAVE SIGNED IT BEFORE ITS
15 SUBMISSION TO THE CITY OR INITIALED IT BEFORE SUBMISSION TO
16 THE COUNCIL?

17 A. CORRECT.

18 Q. YOU KNOW YOU SIGNED IT AT LEAST BEFORE THE OCTOBER
19 10 COUNCIL MEETING, RIGHT?

20 A. CORRECT.

21 Q. HOW DID YOU FIRST SEE THIS MEMO, DID SOMEONE SHOW

22 IT TO YOU?

23 A. I DON'T RECALL IF SOMEONE BROUGHT IT IN MY OFFICE,
24 IF THEY GAVE IT TO A STAFF PERSON. I DON'T REMEMBER.

25 Q. DID YOU READ THE MEMO BEFORE YOU INITIALED IT?

26 A. YES.

27 Q. WAS THERE ANYTHING IN THE MEMO THAT YOU DISAGREED
28 WITH?

SUE HERFURTH, CSR #9645

1190

1 A. NO, THERE WERE -- NO.

2 Q. OKAY. IS THERE ANYTHING IN THIS OCTOBER 8, 2000
3 MEMO ABOUT ANY PROMISES OR REPRESENTATIONS THAT MAY HAVE
4 BEEN MADE TO NORCAL?

5 A. NO.

6 Q. IS THERE ANYTHING IN THIS MEMO ABOUT ANY PROBLEMS
7 WITH CWS NOT USING TEAMSTERS?

8 A. NO.

9 Q. IS THERE ANYTHING IN THIS MEMO ABOUT REQUIRING CWS
10 TO USE THE TEAMSTERS?

11 A. NO.

12 Q. IS THERE ANYTHING IN THIS MEMO ABOUT COMPENSATING
13 NORCAL FOR CWS SWITCHING TO THE TEAMSTERS?

14 A. NO.

15 Q. DID YOU TALK WITH MAYOR GONZALES ABOUT THIS
16 SELECTION OF RECYCLE PLUS CONTRACTORS BEFORE SIGNING THIS
17 MEMO?

18 A. NO. WELL, NOT THAT I RECALL. I TALKED TO JOE.

19 Q. JOE GUERRA?

- 20 A. CORRECT.
- 21 Q. AND WHEN DID THAT CONVERSATION TAKE PLACE?
- 22 A. BEFORE I WOULD HAVE SIGNED THIS MEMO, AND THE
- 23 REASON I KNOW THAT IS I WAS CONCERNED ABOUT THE DIFFERENTIAL
- 24 BETWEEN THE NORCAL CONTRACT AND OTHER CONTRACTS, WHICH IS
- 25 WHY I REQUESTED THAT THE CITY AUDITOR EVALUATE IT.
- 26 Q. THE COUNCIL MEETING WAS ON TUESDAY OCTOBER 10,
- 27 2000. THAT WOULD MEAN THAT THE DATE ON THE MEMO WOULD HAVE
- 28 BEEN A SUNDAY, CORRECT?

SUE HERFURTH, CSR #9645

1191

- 1 A. CORRECT.
- 2 Q. OKAY. SO IS IT YOUR TESTIMONY THAT IT WAS YOUR
- 3 IDEA TO RECOMMEND THAT THE CITY AUDITOR REVIEW THE NORCAL
- 4 PROPOSAL BEFORE A FINAL SELECTION WAS MADE?
- 5 A. YES.
- 6 Q. OKAY. AND THAT RECOMMENDATION IS INCORPORATED INTO
- 7 THE MEMO, IS IT NOT?
- 8 A. YES.
- 9 Q. SO YOU MUST HAVE HAD A DISCUSSION WITH JOE GUERRA
- 10 WHEN, THEN?
- 11 A. I DON'T RECALL WHEN I SPOKE TO HIM.
- 12 Q. SO THE MEMO WAS PREPARED ON THE DATE INDICATED,
- 13 SUNDAY, OCTOBER 8, 2000. DO YOU RECALL HAVING A DISCUSSION
- 14 OVER THE WEEKEND WITH JOE GUERRA?
- 15 A. I DO NOT. I DON'T RECALL TALKING TO HIM OVER THE
- 16 WEEKEND, NO.
- 17 Q. WHAT ABOUT THAT FRIDAY, OCTOBER 6?

- 18 A. THAT' S A POSSI B I L I T Y.
- 19 Q. WHAT DO YOU REMEMBER ABOUT YOUR DI SCUSSI ON WITH
- 20 JOE GUERRA?
- 21 A. UH -- I REMEMBER THAT I WAS DRIVING AND IT WAS
- 22 RAINING, AND I PULLED OFF TO TALK TO HIM ON MY CELL PHONE.
- 23 AND I REMEMBER THAT BECAUSE I WAS HAVING LUNCH WITH A FRIEND
- 24 AND I JUST TOLD HER I WAS PREGNANT. SO IT STUCK IN MY MIND.
- 25 Q. SO THIS WAS A CELL PHONE CONVERSATION?
- 26 A. IT WAS.
- 27 Q. AND WAS IT SHORTLY BEFORE THE LUNCH HOUR, THEN?
- 28 A. IT WAS AFTER.

SUE HERFURTH, CSR #9645

1192

- 1 Q. AFTER LUNCH?
- 2 A. CORRECT.
- 3 Q. DO YOU RECALL HOW MUCH AFTER?
- 4 A. I WASN' T FEELING WELL, SO THAT' S WHY I REMEMBER.
- 5 Q. AND WHAT DID YOU AND MR. GUERRA TALK ABOUT?
- 6 A. I SHARED MY CONCERNS ABOUT THE DI SCREPANCY BETWEEN
- 7 THE NORCAL BID AND THE NEXT BIDDERS, AND JUST THOUGHT THE
- 8 DELTA WAS RATHER LARGE. AND THERE WERE LOTS OF ISSUES
- 9 RELATED TO HAVING THE SPLIT CART AND GARBAGE AND RECYCLING
- 10 GOING IN AND WHETHER OR NOT THE NUMBERS WERE ACCURATE IN
- 11 TERMS OF WHAT STAFFING IT WOULD TAKE TO ACTUALLY DO THAT.
- 12 Q. SO ARE YOU SUGGESTING YOU WERE CONCERNED NORCAL MAY
- 13 BE TOO LOW TO BE TRUE?
- 14 A. CORRECT.
- 15 Q. WHAT DID MR. GUERRA SAY?

16 A. HE AGREED THAT AN AUDIT WAS PROBABLY A VERY GOOD
17 IDEA.

18 Q. SO DID YOU HAVE ANY DISCUSSION -- WHEN YOU HAD THIS
19 DISCUSSION WITH MR. GUERRA, WAS IT CONTEMPLATED PRIOR TO THE
20 VOTE ON OCTOBER 10 SOME MEMO WOULD BE PUT TOGETHER AND
21 CIRCULATED TO SOME MEMBERS OF COUNCIL?

22 A. I KNEW THAT THERE WOULD BE A MEMO COMING FORWARD.
23 I ASSUME HE TALKED TO ME, SAYING HE WOULD LIKE ME TO SIGN
24 IT.

25 Q. HOW DID YOU KNOW THE MEMO WOULD BE COMING FORWARD?

26 A. WE PROBABLY TALKED ABOUT IT. I'M NOT RECALLING THE
27 DETAILS, BUT WE PROBABLY SPOKE ABOUT IT.

28 Q. SO WHAT ELSE DO YOU REMEMBER ABOUT YOUR

SUE HERFURTH, CSR #9645

1193

1 CONVERSATION WITH MR. GUERRA?

2 A. MOSTLY THAT I WAS PLEASED THAT HE WAS WILLING TO
3 INCORPORATE THE AUDIT BECAUSE IT WAS IMPORTANT TO ME.

4 Q. DID HE INDICATE THAT HE WOULD INCORPORATE IT IN
5 THIS MEMO?

6 A. YES, HE TOLD ME HE THOUGHT IT WAS A GOOD IDEA.

7 Q. IT IS INCORPORATED IN THE MEMO?

8 A. CORRECT.

9 Q. SO THE MEMO RECOMMENDS, AT LEAST PRELIMINARILY,
10 THAT NORCAL BE SELECTED AS ONE OF THE SERVICE PROVIDERS,
11 CORRECT?

12 A. CORRECT.

13 Q. AND IT ALSO RECOMMENDS THAT THE CITY AUDITOR REVIEW

14 THE PROPOSALS BEFORE FINAL SELECTION IS MADE, CORRECT?

15 A. CORRECT.

16 Q. I'M JUST PARAPHRASING, BUT THAT WAS THE IMPORT OF
17 THE RECOMMENDATION CORRECT?

18 A. THAT WAS MY INTENT.

19 Q. YES. OKAY. JUST GIVE ME A MOMENT, I'M TRYING TO
20 ASSEMBLE SOME DOCUMENTS HERE.

21 I'M GOING TO MARK AS EXHIBIT 94 WHAT APPEARS TO
22 HAVE BEEN FAXED ON OCTOBER 4, 2000.

23 THE FOREPERSON: I THINK WE'RE UP TO 96.

24 MR. FINKELSTEIN: SORRY THANK YOU. 96 THEN. THE
25 FIRST -- AND THESE EXHIBITS HAVE BATES NUMBERS CC058, 059,
26 060, AND 061.

27 THE FOREPERSON: SO MARKED.

28 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND

SUE HERFURTH, CSR #9645

1194

1 JURY EXHIBIT 96.)

2 BY MR. FINKELSTEIN:

3 Q. CAN YOU TAKE A LOOK AT THAT EXHIBIT AND TELL US IF
4 YOU HAVE EVER SEEN ANY PORTION OF THOSE DOCUMENTS BEFORE?

5 A. I DON'T RECALL WITH SPECIFICITY SEEING THIS
6 DOCUMENT.

7 Q. LET ME DIRECT YOUR ATTENTION TO THE BATES NUMBER AT
8 THE BOTTOM OF THE DOCUMENT. THAT BATES NUMBER INDICATES
9 THAT IT WAS PRODUCED TO US IN RESPONSE TO A SUBPOENA SERVED
10 ON THE CUSTODIAN OF RECORDS FOR THE OFFICE OF COUNCILMEMBER
11 CINDY CHAVEZ.

12 SO YOUR TESTIMONY IS YOU DON'T REMEMBER IF YOU'VE
13 SEEN THAT DOCUMENT BEFORE OR NOT?

14 A. I DON'T. THE SENTIMENTS SOUND FAMILIAR, BUT NOT
15 THE ACTUAL LETTER. I READ A LOT OF DOCUMENTS FOR THIS, FOR
16 THE HEARINGS.

17 Q. PRIOR TO THE FIRST VOTE ON OCTOBER 10, 2000, DID
18 YOU LEARN OF SOME POSSIBLE LABOR ISSUE INVOLVING CWS?

19 A. YES.

20 Q. AND HOW DID YOU LEARN ABOUT IT?

21 A. UH -- I SPOKE TO UH -- THE TEAMSTERS, TO BOBBY
22 MORALES. AND I DON'T REMEMBER IF ANYBODY FROM NORCAL TALKED
23 TO ME ABOUT IT, BUT I WAS AWARE OF IT, YES.

24 Q. CAN YOU GIVE US SOME APPROXIMATE IDEA OF WHEN IT
25 WAS YOU SPOKE TO BOB MORALES?

26 A. I DON'T RECALL.

27 Q. WOULD IT HAVE BEEN THE WEEK PRECEDING FRIDAY, THE
28 WEEK OF FRIDAY, OCTOBER 6?

SUE HERFURTH, CSR #9645

1195

1 A. I DON'T RECALL.

2 Q. IT WAS BEFORE THE FIRST CITY COUNCIL VOTE ON
3 OCTOBER 10?

4 A. MY BEST RECOLLECTION IS THAT IT WOULD HAVE BEEN
5 BEFORE THEN.

6 Q. WHAT DID MR. MORALES TELL YOU?

7 A. THAT HE WAS CONCERNED ABOUT THE WORKERS BEING
8 REPRESENTED BY ILWU BECAUSE THEIR CONTRACT WAS SO MUCH LOWER
9 THAN THE TEAMSTERS, AND THAT IT WOULD IMPACT THE WAGE

10 EARNING STANDARDS.

11 Q. WHAT DID YOU TELL MR. MORALES?

12 A. I TOLD BOBBY, I'M SORRY THAT YOU FEEL THAT WAY, AND
13 IT'S NOT AN ISSUE FOR THE COUNCIL, IT IS AN ISSUE FOR THE
14 LABOR MOVEMENT.

15 Q. WHAT DID MR. MORALES SAY?

16 A. HE GOT VERY UPSET.

17 Q. WHY IS THAT?

18 A. I THINK HE EXPECTED, BECAUSE I CAME FROM THE LABOR
19 MOVEMENT, I WOULD BE MORE PROTECTIVE OF THE INTERESTS, YOU
20 KNOW, HIS INTERESTS. BUT I CAME FROM THE LABOR MOVEMENT AND
21 UNDERSTOOD THAT THE CITY COUNCIL WAS NOT THE PLACE FOR THAT
22 DISCUSSION.

23 Q. HAD MR. MORALES OR THE TEAMSTERS SUPPORTED YOU IN
24 ANY OF YOUR PRIOR CAMPAIGNS FOR ELECTED OFFICE?

25 A. I'M NOT CERTAIN, BUT THEY -- I WOULD HAVE EXPECTED
26 THEM TO, YES.

27 Q. DID MR. MORALES REMIND YOU OF THAT IN HIS
28 CONVERSATION WITH YOU?

SUE HERFURTH, CSR #9645

1196

1 A. HE DID NOT.

2 Q. WAS ANYTHING ELSE SAID THAT YOU RECALL BETWEEN YOU
3 AND MR. MORALES?

4 A. HE WAS VERY ANGRY, AND SO I DON'T RECALL ANY
5 DETAILS EXCEPT HE WAS VERY ANGRY.

6 Q. WHERE DID THIS CONVERSATION TAKE PLACE?

7 A. THE ONE I REMEMBER HIM BEING THE MOST ANGRY, I WAS

8 ON MY PHONE AND AT A MEETING OFF-SITE, SO I STEPPED OUT OF
9 THE MEETING TO TALK TO HIM.

10 Q. CAN YOU GIVE US SOME REFERENCE POINT FOR THE TIMING
11 OF THIS CONVERSATION RELATIVE TO THE FIRST OCTOBER 10 VOTE
12 ON THE NORCAL PROPOSAL?

13 A. I CAN'T OFF THE TOP OF MY HEAD, NO.

14 Q. IS THERE ANY DOCUMENT YOU COULD REFER TO THAT WOULD
15 ASSIST YOU IN THAT REGARD?

16 A. UH -- MAYBE MY CALENDAR, BECAUSE I REMEMBER THE
17 TYPE OF MEETING I STEPPED OUT OF.

18 Q. OKAY.

19 MR. FINKELSTEIN: LET ME MARK AS EXHIBIT 97 COPIES
20 OF CALENDAR PAGES. THEY ARE BATES STAMPED CC136 THROUGH
21 CC162.

22 THE FOREPERSON: SO MARKED.

23 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
24 JURY EXHIBIT 97.)

25 THE WITNESS: THANK YOU.

26 BY MR. FINKELSTEIN:

27 Q. LET ME REPRESENT TO YOU THESE CALENDAR PAGES ARE
28 PRODUCED BY YOUR OFFICE. DOES IT LOOK FAMILIAR?

SUE HERFURTH, CSR #9645

1197

1 A. OH, YEAH. BUSY.

2 Q. I NOTICE SOME OF THE PAGES HAVE CIRCLES ON THEM.
3 WAS THAT PUT ON BY YOU, OR DID SOMEONE ELSE DO THAT?

4 A. YOU KNOW, I THINK IT WAS ME TRYING TO BE PREPARED
5 FOR TODAY.

- 6 Q. SO WHY DON' T YOU TAKE A MOMENT, LOOK THROUGH THE
7 CALENDAR, SEE IF THERE IS ANYTHING HERE THAT HELPS ASSIST
8 YOU IN RECOLLECTING THE TIME OF THE MEETING, DAY OF THE
9 MEETING.
- 10 A. MY BEST RECOLLECTION IS THAT IT COULD HAVE BEEN ON
11 FRIDAY, OCTOBER 6, BECAUSE THE EVENT I WAS AT WAS AN ALL-DAY
12 RETREAT.
- 13 Q. OKAY. LET' S TAKE A LOOK AT IT. SO YOU' RE
14 REFERRING TO THE ENTRY FOR FRIDAY, OCTOBER 6, 8: 30 TO 4: 30
15 P. M. , A-L-F, LEADERSHIP IN ACTION NUMBER THREE, AGILENT?
- 16 A. CORRECT.
- 17 Q. YOU BELIEVE IT WAS THIS FRIDAY THAT YOU HAD THE
18 UNPLEASANT CONVERSATION WITH MR. MORALES?
- 19 A. CORRECT.
- 20 Q. AND WHAT ABOUT THE TIME OF THE DAY, WHEN DO YOU
21 THINK IT TOOK PLACE?
- 22 A. I CAN' T REALLY RECALL IF IT WAS LUNCH TIME OR
23 AFTERNOON BREAK. WHEN YOU' RE PART OF THIS ORGANIZATION YOU
24 CAN' T TAKE PHONE CALLS DURING MEETINGS, SO I THINK IT WOULD
25 HAVE HAD TO HAVE BEEN SOMETHING LIKE AT A BREAK.
- 26 Q. YOUR BEST RECOLLECTION IT WAS A LUNCH BREAK OR
27 AFTERNOON BREAK?
- 28 A. RIGHT.

SUE HERFURTH, CSR #9645

1198

- 1 Q. WAS THERE, AND I TAKE IT THAT THIS IS YOUR
2 CALENDAR, CORRECT?
- 3 A. YES.

- 4 Q. IS THERE ANYTHING ELSE YOU RECALL ABOUT THAT
5 CONVERSATION?
- 6 A. UH -- THE ONLY THING IS THAT I REMEMBER BEING UPSET
7 BY IT, AND THAT I WAS UPSET ENOUGH ABOUT IT TO CALL AMY TO
8 TELL AMY, ONE, THAT I THOUGHT HIS CONDUCT WAS INAPPROPRIATE.
9 TWO, I DIDN'T WANT HIM CALLING MY OFFICE BECAUSE
10 TO FIND ME HE TALKED TO A COUPLE OF MY STAFF. I FOUND THAT
11 INAPPROPRIATE.
- 12 Q. APPARENTLY, HE HAD BEEN SOMEWHAT AGGRESSIVE IN
13 TRACKING YOU DOWN AND GETTING YOU ON THE PHONE?
- 14 A. YES.
- 15 Q. WOULD THAT BE THE WAY TO CHARACTERIZE IT?
- 16 A. MY RECOLLECTION IS YES.
- 17 Q. OKAY. NOW, PRIOR TO THE FIRST CITY COUNCIL VOTE ON
18 OCTOBER 10, 2000, HAD YOU MET WITH ANY REPRESENTATIVES OF
19 NORCAL?
- 20 A. I CAN LOOK.
- 21 Q. SURE. THAT'S WHY WE HAVE IT HERE.
- 22 A. YES.
- 23 Q. WHEN DID YOU MEET WITH NORCAL REPRESENTATIVES?
- 24 A. THURSDAY, OCTOBER 5.
- 25 Q. IS THAT THE ENTRY FOR 1:15 TO 2:00 P.M. ?
- 26 A. CORRECT.
- 27 Q. WHO DID YOU MEET WITH?
- 28 A. ED MCGOVERN.

SUE HERFURTH, CSR #9645

1199

- 1 Q. WHO IS ED MCGOVERN ?

- 2 A. ED MCGOVERN IS A REPRESENTATIVE FOR NORCAL, A
3 LOBBYIST FOR NORCAL, OR WAS AT THE TIME.
- 4 Q. WHERE DID MEETING TAKE PLACE?
- 5 A. MY OFFICE.
- 6 Q. WHO ELSE WAS PRESENT?
- 7 A. I DON'T RECALL.
- 8 Q. WHAT WAS SAID?
- 9 A. UH -- I DON'T RECALL THE DETAILS, BUT I THINK
10 EVERYONE WHO CAME TO SEE ME, THEY WERE FROM NORCAL, OR
11 WHOEVER EITHER WANTED US TO VOTE FOR IT OR DIDN'T, DEPENDING
12 ON WHETHER OR NOT THEY WERE AWARDED THE CONTRACT.
- 13 Q. SO HOW WOULD YOU CHARACTERIZE THIS MEETING?
- 14 A. (NO RESPONSE.)
- 15 Q. WAS THIS A MEET AND GREET, WAS THIS DO YOU HAVE ANY
16 QUESTIONS ABOUT THE PROPOSAL OR LET ME TELL YOU ABOUT
17 NORCAL, WE'RE REALLY GREAT BECAUSE OF X, Y, Z, OR NONE OF
18 THE ABOVE?
- 19 A. I DON'T RECALL WITH SPECIFICITY THE MEETING. I
20 KNOW WHENEVER WE TAKE A VOTE ON SOMETHING BIG, WE OFTEN HAVE
21 PEOPLE COMING TO TELL US HOW GREAT THEIR COMPANY IS, WHY
22 IT'S A GOOD IDEA. I'M SURE IT WAS NO DIFFERENT.
- 23 Q. WAS THERE ANY DISCUSSION IN MEETING WITH THE
24 LOBBYIST MR. MCGOVERN ABOUT CWS, WHICH UNION HE WAS GOING TO
25 BE USING?
- 26 A. NOT TO MY RECOLLECTION, NO.
- 27 Q. OKAY. SO I TAKE IT YOU DID ATTEND THE OCTOBER 10,
28 2000 VOTE ON THE NORCAL PROPOSAL, THE COUNCIL VOTE?

SUE HERFURTH, CSR #9645

1 A. YES.

2 Q. DID THE CITY COUNCIL ADOPT THE RECOMMENDATIONS
3 CONTAINED IN THE OCTOBER 8 MEMO TO COUNCIL?

4 A. YES.

5 Q. SO THEY MADE A PRELIMINARY SELECTION OF NORCAL,
6 AMONG OTHERS, CORRECT?

7 A. CORRECT.

8 Q. THEY REFERRED THE PROPOSALS TO THE CITY AUDITOR FOR
9 A REVIEW?

10 A. CORRECT.

11 Q. AND THEN ASKED THEM TO BRING IT BACK TO THE COUNCIL
12 AFTER THE REVIEW WAS COMPLETED?

13 A. CORRECT.

14 Q. NOW, DURING THE DISCUSSION OF THE SELECTION OF
15 RECYCLE PLUS CONTRACTORS, THAT WAS A FAIRLY LENGTHY COUNCIL
16 MEETING, WAS IT NOT, COUNCIL ISSUE, WAS IT NOT?

17 A. COULD YOU RESTATE THE QUESTION?

18 Q. THAT WAS A BAD QUESTION. WHEN THE COUNCIL TOOK UP
19 THE SELECTION OF THE RECYCLE PLUS VENDOR SELECTION, THAT
20 ISSUE TOOK UP A SIGNIFICANT AMOUNT OF TIME, DID IT NOT?

21 A. ON THE DATE OF THAT VOTE? I DON'T RECALL HOW LONG
22 THE DISCUSSION WAS.

23 Q. OKAY. DID VARIOUS COUNCILMEMBERS SPEAK ON THE
24 ISSUE?

25 A. I DON'T RECALL, WITH SPECIFICITY THAT MEETING. I
26 FEEL PART OF THE REASON I'M HAVING A HARD TIME ANSWERING
27 YOUR QUESTION IS THAT WE HAD SO MANY MEETINGS ON THIS TOPIC
28 AND THEY ALL FELT VERY LONG TO ME.

1 Q. FAIR ENOUGH. OKAY. I UNDERSTAND IT NOW YOUR
2 RECOLLECTION IS SUCH YOU DON'T THINK YOU CAN TESTIFY
3 ACCURATELY.

4 I THINK WE'RE GOING TO HAVE TAKE A LOOK AT THE
5 COUNCIL MEETING, UNFORTUNATELY, AND WATCH IT ALL TOGETHER.

6 A. I'M SORRY.

7 Q. THAT'S OKAY. I JUST NEED A MINUTE TO SET UP.

8 I WILL MARK AS EXHIBIT 98 A CERTIFIED COPY OF A
9 DVD RECORDING OF THE OCTOBER 10, 2000 SAN JOSE CITY COUNCIL
10 MEETING.

11 THE FOREPERSON: SO MARKED.

12 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
13 JURY EXHIBIT 98.)

14 BY MR. FINKELSTEIN:

15 Q. THIS HAS CLOSED CAPTIONS, SO I'LL ASK THE REPORTER
16 NOT TO TRY TAKE DOWN THE AUDIO.

17 (PLAYING VIDEO.)

18 BY MR. FINKELSTEIN:

19 Q. I PAUSED THE VIDEO BECAUSE I WANT TO ASK YOU A
20 QUESTION AT THIS TIME. APPARENTLY -- YOU JUST SAW
21 CARL MOSHER EXPLAINING THE STAFF RECOMMENDATION TO THE CITY
22 COUNCIL, CORRECT?

23 A. CORRECT.

24 Q. AND THE STAFF RECOMMENDATION CONTEMPLATED THAT
25 THERE WOULD BE A SELECTION ON OCTOBER 10, CONTRACTS WOULD
26 HAVE BEEN NEGOTIATED AND WOULD COME BACK TO COUNCIL IN
27 DECEMBER 2000 FOR THE VOTE. ISN'T THAT WHAT MR. MOSHER JUST
28 TOLD US?

1 A. CORRECT.

2 Q. WHEREAS YOUR RECOMMENDATION INCLUDED IN THE OCTOBER
3 8 MEMO WAS TO LENGTHEN THE PROCESS A LITTLE BIT BY INCLUDING
4 AN EXTRA STEP, NAMELY REVIEW BY THE CITY AUDITOR, CORRECT?

5 A. THAT'S CORRECT.

6 Q. OKAY.

7 (PLAYING VIDEO.)

8 BY MR. FINKELSTEIN:

9 Q. WE JUST HEARD SOME REMARKS BY MAYOR GONZALES AT THE
10 COUNCIL MEETING, CORRECT?

11 A. CORRECT.

12 Q. HE TALKED ABOUT, AMONG OTHER THINGS, LABOR PEACE,
13 CORRECT?

14 A. CORRECT.

15 Q. AND LABOR PEACE WAS ONE OF THE REQUIREMENTS IN THE
16 RFP, CORRECT?

17 A. CORRECT.

18 Q. AND WHAT DID YOU UNDERSTAND THE TERM LABOR PEACE TO
19 MEAN?

20 A. LABOR PEACE MEANT THAT THE EMPLOYERS AND EMPLOYEE
21 ORGANIZATIONS, OR EMPLOYEES IF THEY WERE NOT REPRESENTED BY
22 A UNION OR SOME SORT OF ASSOCIATION, WOULD UNDERSTAND THAT
23 ANY DISRUPTION TO SERVICE WOULD BE A PROBLEM, EITHER FOR THE
24 CONTRACT OR PRIMARILY FOR THE CONTRACTOR.

25 Q. SO -- WOULD ONE DEFINITION THAT YOU WOULD AGREE
26 WITH OF LABOR PEACE BE ARRANGEMENTS WERE IN PLACE TO
27 MINIMIZE ANY DISRUPTIONS FROM ACTIONS BY, WORK ACTIONS BY

28 EMPLOYEES?

SUE HERFURTH, CSR #9645

1203

1 A. YES.

2 Q. OKAY. NOW, SO FAR IN THE COUNCIL MEETING WE HEARD
3 MAYOR GONZALES' S REMARKS. DID HE SAY ANYTHING ABOUT ANY
4 CONCERNS ABOUT THE CWS MRF WORKERS BEING REPRESENTED
5 PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT WITH THE ILWU
6 THAT PROVIDED FOR LESSER WAGES AND BENEFITS THAN THE
7 TEAMSTERS?

8 A. JUST NOW?

9 Q. YES.

10 A. NO.

11 Q. SORRY?

12 A. NO.

13 Q. SO FAR IN THE COUNCIL MEETING, DID THE MAYOR SAY
14 ANYTHING ABOUT PROMISES OR REPRESENTATIONS THAT MAY HAVE
15 BEEN MADE TO NORCAL?

16 A. NO.

17 (PLAYING VIDEO.)

18 BY MR. FINKELSTEIN:

19 Q. NOW, WE JUST HEARD MR. MOSHER REFER TO THE
20 MAYOR' S MEMORANDUM. WOULD THAT BE THE OCTOBER 8, 2000
21 MEMORANDUM?

22 A. I BELIEVE SO.

23 Q. WE JUST HEARD COUNCILMEMBER LEZOTTE EXPRESS HER
24 DESIRE TO KNOW MORE ABOUT ANY POTENTIAL LIABILITIES THAT
25 NORCAL MIGHT HAVE THAT COULD IMPACT THEIR FINANCIAL ABILITY

26 TO PERFORM THE CONTRACT, CORRECT?

27 A. CORRECT.

28 Q. YOU KNOW, I'M JUST NOTICING IT'S ABOUT QUARTER TO

SUE HERFURTH, CSR #9645

1204

1 3:00. WHY DON'T WE TAKE A FIVE-MINUTE BREAK.

2 THE FOREPERSON: LET ME READ A CONFIDENTIALITY
3 ADMONITION TO YOU THAT APPLIES NOT ONLY TODAY, BUT AFTER
4 THIS SESSION.

5 YOU ARE ADMONISHED NOT TO REVEAL TO ANY PERSON,
6 EXCEPT AS DIRECTED BY THE COURT, WHAT QUESTIONS WERE ASKED
7 OR WHAT RESPONSES WERE GIVEN OR ANY OTHER MATTERS CONCERNING
8 THE NATURE OR SUBJECT OF THE GRAND JURY'S INVESTIGATION
9 WHICH YOU LEARNED DURING YOUR APPEARANCE BEFORE THE GRAND
10 JURY, UNLESS AND UNTIL SUCH TIME AS THE TRANSCRIPT OF THIS
11 GRAND JURY PROCEEDING IS MADE PUBLIC. VIOLATION OF THIS
12 ADMONITION MAY BE PUNISHABLE AS A CONTEMPT OF COURT.

13 DO YOU UNDERSTAND THAT?

14 THE WITNESS: I DO. THANK YOU.

15 MR. FINKELSTEIN: SEE YOU IN ABOUT FIVE MINUTES.
16 JUST WAIT OUTSIDE.

17 (A BRIEF RECESS WAS TAKEN.)

18 BY MR. FINKELSTEIN:

19 Q. I'LL JUST REMIND YOU YOU'RE STILL UNDER OATH,
20 HAVING BEEN SWORN IN THIS INVESTIGATION; DO YOU UNDERSTAND
21 THAT?

22 A. I DO.

23 Q. NOW, WHEN WE RECESSED WE HEARD COUNCILMEMBER

24 LEZOTTE MAKE AN INQUIRY ABOUT WHETHER NORCAL HAD, OR ANY
25 OTHER VENDORS HAD ANY ADDITIONAL LIABILITIES THAT THE
26 COUNCIL WAS NOT AWARE OF OR THAT STAFF WAS NOT AWARE OF,
27 CORRECT?

28 A. CORRECT.

SUE HERFURTH, CSR #9645

1205

1 Q. LET ME SHOW YOU GRAND JURY EXHIBIT 15. TAKE A LOOK
2 AT THIS DOCUMENT, PLEASE.

3 HAVE YOU SEEN THAT DOCUMENT BEFORE?

4 A. I HAVE NOT.

5 Q. OKAY. LET ME JUST ORIENT YOU TO THE DOCUMENT. THE
6 DOCUMENT IS LABELED, "ADDENDUM TO AGREEMENT BETWEEN NORCAL
7 WASTE SYSTEMS, INC. AND CALIFORNIA WASTE SOLUTIONS, INC. FOR
8 PROCESSING RESIDENTIAL RECYCLABLES FROM THE CITY OF
9 SAN JOSE," CORRECT?

10 A. CORRECT.

11 Q. THE DOCUMENT PURPORTS TO CONTAIN THE SIGNATURE OF
12 BOTH NORCAL'S PRESIDENT AND CWS'S PRESIDENT, CORRECT?

13 A. CORRECT.

14 Q. THE SIGNATURE DATE IS OCTOBER 9, 2000, CORRECT?

15 A. CORRECT.

16 Q. WHICH WOULD HAVE BEEN THE DAY BEFORE THE OCTOBER 10
17 COUNCIL MEETING WE HAVE BEEN WATCHING, CORRECT?

18 A. CORRECT.

19 Q. THE SECOND PARAGRAPH OF THE DOCUMENT IN SUBSTANCE
20 SAYS THAT NORCAL IS GOING TO REIMBURSE CWS FOR THE EXTRA
21 LABOR COSTS, WAGES, AND BENEFITS FOR CWS PAYING HIGHER WAGES

22 AND BENEFITS THAN WHAT WAS SET OUT IN THE NORCAL PROPOSAL,
23 CORRECT?

24 A. CORRECT.

25 Q. AND WE NOW KNOW BASED ON THE EVENTS IN 2004 THAT
26 THAT WAS APPROXIMATELY \$11 MILLION, CORRECT?

27 A. CORRECT.

28 Q. SO THIS WOULD BE AN ADDITIONAL LIABILITY THAT

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1206

1 NORCAL WAS UNDERTAKING ON THAT DATE OF SOME \$10 MILLION, \$11
2 MILLION, CORRECT?

3 A. CORRECT. I DON'T KNOW AT THE TIME --

4 Q. I UNDERSTAND. YOU JUST TOLD US YOU HAD NOT SEEN IT
5 BEFORE.

6 A. NO, NO, NO. I DIDN'T KNOW AT THE TIME IF THERE WAS
7 ANYTHING ATTACHED TO THIS WITH AMOUNTS OF MONEY. I DO KNOW
8 WHAT THE END RESULT WAS.

9 Q. WE'VE SEEN THINGS WITH WHAT THE ESTIMATES WERE AT
10 THE TIME. WOULD INFORMATION ABOUT THIS DOCUMENT HAVE BEEN
11 RESPONSIVE TO COUNCILMEMBER LEZOTTE'S INQUIRY ABOUT
12 ADDITIONAL LIABILITIES?

13 A. YES.

14 Q. THE FIRST PARAGRAPH OF THIS DOCUMENT HAS A RECITAL
15 THAT READS THE PARTIES HAVE LEARNED THAT THE CITY OF SAN
16 JOSE MAY REQUIRE CALIFORNIA WASTE SOLUTIONS, INC. AND NORCAL
17 WASTE SYSTEMS, INC. TO PROVIDE WAGE AND BENEFIT PACKAGES
18 THAT ARE DIFFERENT, IT SAYS "THAT" BUT IT MEANS "THAN,"
19 CWS' S CURRENT WAGE AND BENEFIT PACKAGES. DO YOU SEE THAT

20 SENTENCE?

21 A. I DO.

22 Q. DO YOU KNOW WHAT THE REFERENCE TO THE CITY OF
23 SAN JOSE REQUIREMENT IS ALL ABOUT?

24 A. I DO NOT.

25 Q. DO YOU HAVE ANY KNOWLEDGE ABOUT WHO IN THE CITY MAY
26 HAVE REQUIRED, IF ANYONE, NORCAL AND CWS TO PAY DIFFERENT
27 WAGES AND BENEFITS?

28 A. I DO NOT.

SUE HERFURTH, CSR #9645

1207

1 Q. TO YOUR RECOLLECTION, DID ANYONE AT THIS OCTOBER
2 10, 2000 COUNCIL MEETING DISCLOSE THE EXISTENCE OF THIS
3 ADDENDUM ENTERED INTO THE DAY BEFORE THE COUNCIL MEETING?

4 A. NOT TO MY RECOLLECTION.

5 Q. DID MAYOR GONZALES MAKE ANY REFERENCE TO THIS?

6 A. NOT TO MY RECOLLECTION.

7 Q. WHY DON'T WE CONTINUE WATCHING THE MOVIE OR THE
8 VIDEO?

9 (PLAYING VIDEO.)

10 BY MR. FINKELSTEIN:

11 Q. LET ME PAUSE THE VIDEO. I SHOULD STATE FOR THE
12 RECORD, EITHER THE VIDEO DOESN'T CONTAIN CLOSED CAPTIONING
13 OR I HAVEN'T QUITE FIGURED OUT HOW TO TURN IT ON; WE'LL HAVE
14 TO DEAL WITH THAT AT A LATER DATE.

15 COUNCILMEMBER CHAVEZ, WE HAVE BEEN LISTENING TO
16 THE COUNCIL MEETING AND NOW WE'RE HEARING FROM COUNCILMEMBER
17 DIQUISTO.

- 18 A. THAT' S CORRECT.
- 19 Q. HE JUST RAISED A QUESTION ABOUT THE LABOR UNIONS
20 AND WHO IS REPRESENTING THE DIFFERENT EMPLOYEES, CORRECT?
- 21 A. CORRECT.
- 22 Q. AND WE HEARD THE MAYOR RESPOND IN PART ABOUT
23 REPRESENTATION, CORRECT?
- 24 A. RESPOND?
- 25 Q. HE MADE SOME COMMENT, HE CLARIFIED FOR DIRECTOR
26 MOSHER THE QUESTION POSED BY COUNCILMEMBER DIQUISTO?
- 27 A. THAT' S CORRECT.
- 28 Q. HE ASKED ABOUT WHICH UNIONS ARE REPRESENTING WHOM,

SUE HERFURTH, CSR #9645

1208

- 1 RIGHT?
- 2 A. CORRECT.
- 3 Q. AND WE'VE JUST HEARD MR. MOSHER SAY THAT THAT' S
4 NOT, WHICH UNIONS ARE REPRESENTING IS NOT A MATTER FOR THE
5 CITY?
- 6 A. THAT' S CORRECT.
- 7 Q. DID MAYOR GONZALES AT THIS POINT IN THE MEETING AT
8 LEAST MENTION ANYTHING ABOUT ANY ISSUE BETWEEN THE TEAMSTERS
9 AND THE ILWU CONCERNING CWS MRF WORKERS?
- 10 A. NO.
- 11 (PLAYING VIDEO)
- 12 MR. FINKELSTEIN:
- 13 Q. I'LL STOP THE VIDEO AGAIN. WE JUST HEARD THE MAYOR
14 TELL COUNCILMEMBER DIQUISTO IN RESPONSE TO QUESTIONS ABOUT
15 THE LABOR CONTRACT THAT THE HAULERS MAY ENTER INTO WITH THE

16 UNIONS THERE IS NO GUARANTEE ABOUT WHAT KIND OF CONTRACT
17 THEY MIGHT HAVE, CORRECT?

18 A. THAT' S CORRECT.

19 (PLAYING VIDEO.)

20 BY MR. FINKELSTEIN:

21 Q. I SHOULD INDICATE WE FIGURED OUT HOW TO TURN THE
22 CLOSED CAPTIONING BACK ON. WE JUST HEARD CARL MOSHER
23 EXPLAIN ONE OF THE PROVISIONS IN THE CONTRACT, THAT THERE' S
24 A PROVISION FOR INCREASED COMPENSATION TO THE HAULERS BASED
25 ON A CPI ADJUSTMENT, BUT ON NO OTHER BASIS, CORRECT?

26 A. CORRECT.

27 Q. SO FOR EXAMPLE, IF ONE OF THE HAULERS NEGOTIATED A
28 NEW COLLECTIVE BARGAINING AGREEMENT WITH AN INCREASE IN WAGE

SUE HERFURTH, CSR #9645

1209

1 AND BENEFIT COSTS UNDER THE CONTRACT THAT WAS BEING PROPOSED
2 AT THAT TIME, OCTOBER OF 2000, THAT HAULER WOULD NOT HAVE
3 THE RIGHT UNDER THE CONTRACT FOR ADDITIONAL COMPENSATION?

4 A. THAT' S CORRECT.

5 Q. THE HAULER WOULD HAVE TO ABSORB THE COST?

6 A. THAT' S CORRECT.

7 Q. THANK YOU.

8 (PLAYING VIDEO.)

9 BY MR. FINKELSTEIN:

10 Q. I WILL STOP THE VIDEO AGAIN. THE MAYOR JUST
11 INDICATED THAT, AT THIS POINT IN THE VIDEO, WE HEARD FROM
12 COUNCILMEMBERS WHO CARED TO MAKE COMMENTS, CORRECT?

13 A. RIGHT.

14 Q. NOW THE MAYOR IS GOING TO TURN IT OVER TO THE
15 PUBLIC. THUS FAR, HAVE YOU HEARD THE MAYOR OR ANYONE ELSE
16 SAY ANYTHING ABOUT A POTENTIAL PROBLEM WITH CWS MRF WORKERS'
17 REPRESENTATION, UNION REPRESENTATION?

18 A. JOHN DIQUISTO.

19 Q. HE ASKED WHETHER THERE WAS AN ISSUE?

20 A. CORRECT.

21 Q. THAT WAS NOT FOCUSED ON CWS, WAS IT?

22 A. I DON'T KNOW IF HE WAS MAKING A DETERMINATION
23 BETWEEN ONE UNION OR THE OTHER OR WHAT WORKERS, THE
24 CATEGORIES OF WORKERS.

25 Q. HE RAISED A GENERAL QUESTION ABOUT UNION
26 REPRESENTATION?

27 A. SO DID MR. DIAZ.

28 Q. YES. MR. DIAZ, YES. DID THE MAYOR SAY ANYTHING

SUE HERFURTH, CSR #9645

1210

1 ABOUT ANY MEETINGS HE MIGHT HAVE HAD WITH MR. MORALES OR
2 NORCAL OR CWS ABOUT THAT ISSUE?

3 A. NO, HE DID NOT.

4 (PLAYING VIDEO.)

5 BY MR. FINKELSTEIN:

6 Q. LET ME STOP THE VIDEO. WE HAVE BEEN LISTENING TO
7 COMMENTS FROM THE PUBLIC, SPECIFICALLY MR. MORALES FROM THE
8 TEAMSTERS, CORRECT?

9 A. CORRECT.

10 Q. AND HE MADE A COMMENT ABOUT HAVING A GOOD
11 RELATIONSHIP WITH NORCAL AND THE EXISTING VENDORS.

12 A. CORRECT.

13 Q. HE ALSO SAID IT WAS A PROBLEM WITH NORCAL'S
14 SUBCONTRACTOR, CWS, RIGHT?

15 A. CORRECT. THERE WAS A PROBLEM.

16 Q. BEAR WITH ME FOR A MOMENT. LET ME HAVE YOU TAKE A
17 LOOK AT EXHIBIT 16. THIS IS AN OCTOBER 9 FAXED LETTER TO
18 MAYOR RON GONZALES. HAVE YOU SEEN THIS LETTER BEFORE?

19 A. NO.

20 Q. NOW, IN THIS LETTER, THIS LETTER APPEARS TO BE A
21 LETTER FROM CALIFORNIA WASTE SOLUTIONS PRESIDENT VICTOR
22 DUONG?

23 A. CORRECT.

24 Q. IN THIS LETTER DATED OCTOBER 9, DOES MR. DUONG
25 ADVISE THE MAYOR THAT CWS WILL PAY SORTERS HIRED PURSUANT TO
26 RECYCLE PLUS AWARD WAGE AND BENEFITS AT LEAST EQUIVALENT TO
27 THOSE PRESENTLY BEING PAID TO WORKERS OCCUPYING THOSE
28 POSITIONS UNDER THE CURRENT AGREEMENTS IN SAN JOSE? IS THAT

SUE HERFURTH, CSR #9645

1211

1 WHAT THE LETTER SAYS?

2 A. YES.

3 Q. AND THERE'S A HANDWRITTEN NOTE ON THE TOP UPPER
4 RIGHT-HAND CORNER, IT SAYS "FILE RECYCLE PLUS." DO YOU SEE
5 THAT?

6 A. I DO.

7 Q. DO YOU HAVE ANY IDEA WHOSE WRITING THAT IS?

8 A. I DO NOT.

9 Q. SO I WOULD YOU LIKE TO LISTEN CAREFULLY, AS YOU

10 HAVE BEEN, I WILL CONTINUE THE VIDEO IN A MINUTE, AND TELL
11 US WHETHER THE MAYOR IN RESPONSE TO MR. MORALES' S CONCERNS
12 AT THIS PUBLIC COUNCIL MEETING ON OCTOBER 10, THE DAY AFTER
13 THAT LETTER IS DATED, RESPONDS IN ANY WAY TO INDICATE THAT
14 HE' S GOT SOME ASSURANCES FROM CWS THAT IT WILL PAY AT LEAST
15 THE EXISTING WAGES AND BENEFITS. OKAY?

16 (PLAYING VIDEO.)

17 BY MR. FINKELSTEIN:

18 Q. SO, MR. MORALES JUST FINISHED HIS REMARKS TO THE
19 MAYOR, CORRECT?

20 A. CORRECT.

21 Q. AND DID THE MAYOR RESPOND IN ANY WAY ABOUT ANY
22 ASSURANCES THAT HE HAD GOTTEN FROM CWS ABOUT CWS AGREEING TO
23 PAY WAGES AND BENEFITS NO LESS THAN THE EXISTING WAGES AND
24 BENEFITS?

25 A. NO.

26 Q. AND YOU HAVE BEEN HEARING THE TAPE WITH THE REST OF
27 US, AND WHEN MR. MORALES MADE A COMMENT, AND I CAN PLAY IT
28 BACK IF YOU LIKE, ABOUT AFTER LISTENING TO THE ASSURANCES

SUE HERFURTH, CSR #9645

1212

1 FROM THE MAYOR THAT THESE MATTERS WERE GOING TO BE RESOLVED.
2 DID YOU HEAR ANY ASSURANCES FROM THE MAYOR EXPRESSED AT THIS
3 PUBLIC MEETING?

4 A. I DID, AT THE BEGINNING WHEN HE TALKED ABOUT HIS
5 EMPHASIS ON LABOR PEACE.

6 Q. WELL, DOES LABOR PEACE MEAN THAT ANY DISPUTE
7 BETWEEN COMPETING UNIONS WOULD BE RESOLVED?

8 A. NO, BUT IT DOES MEAN THAT, I THINK -- I COULDN'T
9 INTERPRET WHAT HE WAS SAYING, BUT HAD I SAID THAT, I WOULD
10 HAVE BEEN TELLING PEOPLE, I'M PAYING ATTENTION TO THE
11 PROBLEM, BECAUSE WE DON'T WANT GARBAGE PILING UP IN THE
12 STREETS.

13 Q. DOES LABOR PEACE REQUIRE THAT A NEW VENDOR AGREE TO
14 BE BOUND BY THE FORMER VENDOR'S COLLECTIVE BARGAINING
15 AGREEMENT?

16 A. NO, IT DOES NOT.

17 Q. THAT'S WHAT MR. MORALES SEEMED TO BE CONCERNED
18 ABOUT, WAS IT NOT? DO YOU WANT ME PLAY IT BACK?

19 A. NO, I DON'T NEED YOU TO PLAY IT BACK. IT SOUNDS TO
20 ME LIKE BOBBY MORALES' CONCERNS ARE AT LEAST TWO PARTS. ONE
21 PRIMARILY BEING A JURISDICTIONAL ISSUE, THE SECOND BEING THE
22 TREATMENT OF THE WORKERS AND THEIR OPPORTUNITY.

23 Q. RIGHT. AND WE DIDN'T HEAR MAYOR GONZALES SAY
24 ANYTHING ABOUT HAVING GOTTEN THIS ASSURANCE FROM CWS THE DAY
25 BEFORE, ON OCTOBER 9, IN THE LETTER, DO WE?

26 A. THAT'S CORRECT.

27 (PLAYING VIDEO.)

28 BY MR. FINKELSTEIN:

SUE HERFURTH, CSR #9645

1213

1 Q. WE JUST HEARD KEN ABSALOM, A LAWYER FROM THE
2 TEAMSTERS, RAISE THE ISSUE OF THE NEUTRALITY AGREEMENTS,
3 CORRECT?

4 A. THAT'S CORRECT.

5 Q. THEY ARE SOMETIMES CALLED CARD CHECK AGREEMENTS?

- 6 A. THAT' S CORRECT.
- 7 Q. THE WAY IT WORKS IS, THIS IS A SUBSTITUTE PROCEDURE
8 FOR AN NLRB SUPERVISED ELECTION?
- 9 A. THAT' S CORRECT.
- 10 Q. IN OTHER WORDS, THE EMPLOYEES FILL OUT PREFERENCE
11 CARDS AND INDICATE WHAT UNION THEY WANT TO BE REPRESENTED
12 BY, AND THE UNION WITH A MAJORITY OF THE CARDS WINS,
13 ESSENTIALLY?
- 14 A. THAT' S ONE WAY THAT IT WORKS, YES.
- 15 Q. RIGHT. I THINK AT THE TIME THAT KEN ABSALOM WAS
16 MAKING THE STATEMENT, WAS IT YOUR UNDERSTANDING, THAT THE
17 CITY COULD NOT REQUIRE NEUTRALITY AGREEMENTS BY THE VENDORS
18 AS A CONDITION OF GETTING AN AWARD FROM THE CITY?
- 19 A. THAT IS CORRECT.
- 20 Q. AS A MATTER OF FACT, A FEW WEEKS LATER THE CITY
21 ATTORNEY ISSUED A WRITTEN OPINION SAYING AS MUCH, ISN' T THAT
22 TRUE?
- 23 A. I DON' T RECALL THE WRITTEN OPINION. I DO BELIEVE
24 THAT' S RIGHT.
- 25 Q. LET ME SEE IF I CAN FIND IT. WHY DON' T YOU TAKE A
26 LOOK AT EXHIBIT 20.
- 27 A. THANK YOU.
- 28 Q. DO YOU RECALL SEEING THAT MEMORANDUM BEFORE?

SUE HERFURTH, CSR #9645

1214

- 1 A. I DON' T RECALL IT, BUT THE LANGUAGE SOUNDS
2 FAMILIAR. I DON' T RECALL SPECIFICALLY THE DOCUMENT.
- 3 Q. OKAY. AT THE BOTTOM OF PAGE ONE THERE' S

4 A DISCUSSION ABOUT SEVERAL SPEAKERS AT THE COUNCIL MEETING
5 URGING THE COUNCIL TO ADD THE NEW PROVISION TO PROPOSED
6 CONTRACTS, A NEUTRALITY AGREEMENT, CORRECT?

7 A. YES.

8 Q. AND THE MEMO GOES ON TO EXPLAIN WHAT A NEUTRALITY
9 AGREEMENT IS?

10 A. IT DOES.

11 Q. AND THEN THE MEMO SAYS THAT A CITY REQUIREMENT, THE
12 PROPOSERS, THAT'S THE TERM, IT REFERS TO THE HAULERS THAT
13 ARE SEEKING THESE CONTRACTS, RIGHT?

14 A. CORRECT.

15 Q. THE CITY REQUIREMENT THAT PROPOSERS ENTERING INTO
16 NEUTRALITY AGREEMENTS OR AGREE TO NEUTRALITY PROVISIONS ARE
17 RAISING VERY SERIOUS LEGAL CONCERNS ON TWO LEVELS.

18 FIRST, FEDERAL LABOR LAW PROHIBITS A CITY FROM
19 INTERFERING WITH THE COLLECTIVE BARGAINING PROCESS REGULATED
20 BY FEDERAL LAW, CORRECT?

21 A. CORRECT.

22 Q. THIS WAS A MEMO THAT TO YOUR KNOWLEDGE WAS
23 DISTRIBUTED TO THE ENTIRE COUNCIL?

24 A. YES, IT APPEARS TO ME THAT --

25 Q. AS A MATTER OF FACT, IF YOU LOOK AT THE FIRST PAGE
26 OF THE MEMO, THERE'S A REFERENCE TO IT BEING PART OF THE
27 RECORD FOR THE NOVEMBER 7, 2000 COUNCIL MEETING, AGENDA ITEM
28 9B.

SUE HERFURTH, CSR #9645

1215

1 A. CORRECT.

2 Q. THAT SUGGESTS TO YOU, DOES IS NOT, THAT IT WAS
3 TRANSMITTED TO THE COUNCIL AND MADE PART OF THE OFFICIAL
4 RECORD?

5 A. IT DOES.

6 Q. THEN THE MEMO GOES ON TO RECITE THE EMPLOYEES OF
7 NORCAL SUBCONTRACTOR, CALIFORNIA WASTE SOLUTIONS, INC. ARE
8 CURRENTLY REPRESENTED BY A LABOR ORGANIZATION, DOES IT NOT?

9 A. CORRECT.

10 Q. AND THAT WOULD BE THE ILWU, CORRECT?

11 A. CORRECT.

12 Q. AND THE MEMO CONCLUDES THAT PARAGRAPH BY SAYING AS
13 SUCH, THERE IS LITTLE CITY BUSINESS INTEREST OR
14 JUSTIFICATION IN REQUIRING NEUTRALITY AGREEMENTS IN THIS
15 CASE, RIGHT?

16 A. RIGHT.

17 Q. THE NEXT PARAGRAPH TALKS ABOUT REQUIRING NEUTRALITY
18 AGREEMENTS CALLING INTO QUESTION THE INTEGRITY OF THE RFP
19 PROCESS BECAUSE IT WAS NEVER A SPECIFICATION OF THE RFP,
20 CORRECT?

21 A. RIGHT.

22 Q. SO BASED ON YOUR VAST EXPERIENCE IN ORGANIZED
23 LABOR, DO YOU AGREE WITH THE CONCLUSION OF THIS MEMO?

24 A. I DID NOT AGREE WITH THE VERDICT THAT IT WOULD BE A
25 VIOLATION OF FEDERAL LABOR LAW, AND I DID NOT BECAUSE AS A
26 PROCURER OF SERVICES AND THE CITY BEING A PROCURER OF
27 SERVICES, WE HAVE A HIGH INTEREST ESPECIALLY RELATING TO
28 THINGS LIKE GARBAGE, THAT YOU DON'T HAVE GARBAGE PILING UP

SUE HERFURTH, CSR #9645

1 ON PEOPLE'S STREETS. BUT I'M NOT AN ATTORNEY, AND I LIKE TO
2 ARGUE WITH OUR CITY ATTORNEY QUITE A LOT. THIS WOULD HAVE
3 BEEN SOMETHING I ARGUED WITH HIM ABOUT.

4 Q. DID YOU IN THIS CASE?

5 A. I HAVE A HARD TIME BELIEVING I DIDN'T, BUT I MAY
6 NOT HAVE. I THINK WHAT IS COMPELLING TO ME ABOUT THIS IS
7 THAT IT WAS NOT PART OF THE ORIGINAL REQUEST FOR PROPOSALS.

8 Q. I THINK EARLIER THIS AFTERNOON, AT THE START OF
9 YOUR TESTIMONY, I WENT THROUGH A SERIES OF QUESTIONS, AND I
10 THINK YOU TOLD US THE CITY COULD NOT HAVE LAWFULLY REQUIRED
11 THE PROPOSERS TO GO WITH ONE UNION VERSUS ANOTHER, CORRECT?

12 A. THAT'S CORRECT.

13 Q. I SEE THAT IT'S ALMOST 4:00 O'CLOCK, SO WE'RE GOING
14 TO HAVE TO RECESS FOR THE EVENING. AND I HATE TO DO THIS TO
15 YOU, BUT WE'LL NEED YOU TO COME BACK. WHY DON'T WE DISCUSS
16 THAT OFFLINE, WE DON'T HAVE TO DO IT ON THE RECORD, UNLESS
17 THERE IS ANYTHING ELSE THE JURORS WANT.

18 THE FOREPERSON: I THINK WE ALSO WANT TO, OFF THE
19 RECORD, TALK ABOUT SCHEDULING.

20 MR. FINKELSTEIN: YOU'RE NOT EXCUSED; THAT MEANS
21 YOU ARE STILL SUBJECT TO BEING RECALLED ON SUBPOENA. WE
22 WOULD LIKE TO GET YOU BACK NEXT WEEK SOME TIME. I'LL TALK
23 TO YOU ABOUT THAT IN A MOMENT.

24 THE WITNESS: ALL RIGHT.

25 MR. FINKELSTEIN: THANK YOU VERY MUCH FOR COMING
26 HERE THIS AFTERNOON.

27 THE FOREPERSON: LET ME ALSO REMIND YOU OF THE
28 CONFIDENTIALITY ADMONITION, WHICH IS DURABLE UNTIL THE COURT

1 CHOOSES TO RELEASE THE TRANSCRIPT OF THIS PROCEEDING.
2 YOU' RE NOT TO TALK WITH ANYONE ABOUT THE CONTENT OF WHAT WAS
3 SAID.

4 THE WITNESS: I UNDERSTAND. THANK YOU.

5 THE FOREPERSON: LET' S ADJOURN THIS SESSION FOR
6 TODAY AND GO OFF THE RECORD.

7 (COURT WAS ADJOURNED FOR THE DAY.)

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SUE HERFURTH, CSR #9645

1218

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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 4TH, 5TH AND 6TH DAY OF APRIL, 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.

SUE HERFURTH, C. S. R.
CERTIFICATE NO. 9645

Vol 7Go~1

27

28

SUE HERFURTH, CSR #9645