

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

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

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SAN JOSE, CALIFORNIA

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MAY 10, 2006
MAY 11, 2006
MAY 12, 2006
MAY 16, 2006

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APPEARANCES:

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

SUE HERFURTH, CSR #9645

1934

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1935

1 SAN JOSE, CALIFORNIA

MAY 10, 2006

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PROCEEDINGS:

MR. FINKELSTEIN: ANY QUESTIONS BEFORE WE CALL THE
NEXT WITNESS? THE WITNESSES WE ARE GOING TO BE HEARING FROM
THIS WEEK IN LARGE PART RELATE TO STATEMENTS AND EVIDENCE

7 GIVEN BY JOHN NICOLETTI OF NORCAL WHERE HE TESTIFIED THAT HE
8 HAD MEETINGS WITH SOME COUNCILMEMBERS AND SOME OF THEIR
9 STAFF AND MADE CERTAIN DISCLOSURES. SO WE WANT TO HEAR FROM
10 THOSE WITNESSES TO SEE IF THEIR VERSION OF EVENTS REGARDING
11 WHETHER THESE DISCLOSURES WERE MADE AND WHAT WAS SAID, SO
12 THAT'S WHAT THE WITNESSES THIS WEEK WILL BE FOCUSED ON.

13 A JUROR: I HAD A QUESTION AS TO WHETHER THE SAME
14 KIND OF PRIVILEGE EXISTS BETWEEN AN AUDITOR LIKE KPMG AND
15 THE HEAD OR MANAGEMENT OF A COMPANY IN DISCLOSING
16 INFORMATION RELATIVE TO A PUBLIC STATEMENT FOR THE COMPANY'S
17 FINANCIAL STATEMENT.

18 MR. FINKELSTEIN: WELL, IF YOU'RE ASKING FOR LEGAL
19 ADVICE ON THAT POINT, OUR VIEW IS THAT THERE IS NO
20 ACCOUNTANT-CLIENT PRIVILEGE, BUT UNDER SOME CIRCUMSTANCES
21 THERE MAY BE A PRIVILEGE. IF, FOR EXAMPLE, THE ACCOUNTANT
22 IS HIRED BY THE ATTORNEY TO FURTHER THE CLIENT'S INTERESTS,
23 THEN IT MIGHT FALL UNDER THE ATTORNEY-CLIENT PRIVILEGE JUST
24 LIKE AN ATTORNEY MIGHT HIRE AN EXPERT TO GIVE ADVICE ON
25 OTHER MATTERS, A PHYSICIAN IN A MALPRACTICE CASE, FOR
26 EXAMPLE. SO EVEN THOUGH THERE IS GENERALLY NO
27 CLIENT-ACCOUNTANT PRIVILEGE IF THE ACCOUNTANT IS DOING --

28 A JUROR: I WAS THINKING SPECIFICALLY OF MISS

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1 DEFALCO OF KPMG.

2 MR. FINKELSTEIN: I'M NOT SURE WHAT THE ANSWER IS
3 IN OUR CASE, WHETHER OR NOT THIS WAS DONE UNDER COUNSEL'S
4 DIRECTION OR NOT. THAT WOULD BE A FACTOR THE COURTS WOULD
5 LOOK AT.

6 ANYTHING ELSE?

7 JOSHUA HOWARD,
8 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
9 AS FOLLOWS:

10 THE WITNESS: I DO.

11 EXAMINATION:

12 BY MR. FINKELSTEIN:

13 Q. MR. HOWARD, COULD YOU PLEASE TELL US YOUR FULL
14 LEGAL NAME.

15 A. SURE. JOSHUA SCOTT HOWARD.

16 Q. CAN YOU SPELL YOUR LAST NAME FOR THE REPORTER.

17 A. H-O-W-A-R-D.

18 Q. MR. HOWARD, HOW ARE YOU EMPLOYED?

19 A. I'M CURRENTLY GOVERNMENT AFFAIRS MANAGER FOR THE
20 CALIFORNIA DEPARTMENT OF ASSOCIATIONS, TRI-COUNTY DIVISION.

21 Q. WHAT IS THAT ORGANIZATION?

22 A. IT'S A NONPROFIT ASSOCIATION REPRESENTING RENTAL
23 PROPERTY OWNERS AND MANAGERS ACROSS THE STATE. THE OFFICE I
24 WORK IN REPRESENTS THE INTERESTS OF THOSE MEMBERS IN THE
25 SANTA CLARA, SAN MATEO, AND SANTA CRUZ COUNTIES.

26 Q. THERE IS A MICROPHONE UP ON THE STAND -- THANKS.
27 HOW LONG HAVE YOU BEEN EMPLOYED IN THAT
28 ORGANIZATION?

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1937

1 A. SINCE AUGUST OF 2005.

2 Q. WHAT DID YOU DO BEFORE THAT?

3 A. I WAS THE COMMUNICATIONS MANAGER FOR THE PENINSULA
4 HOUSING COALITION.

5 Q. AND WHAT IS THE PENINSULA HOUSING COALITION?

6 A. A NONPROFIT HOUSING DEVELOPER FOR RENTAL HOUSING
7 ACROSS NORTHERN CALIFORNIA.

8 Q. AND HOW LONG WERE YOU WITH THAT ORGANIZATION?

9 A. APPROXIMATELY THREE MONTHS.

10 Q. WHAT DID YOU DO BEFORE THAT?

11 A. PRIOR TO THAT, I WAS AN AIDE TO FORMER SAN JOSE
12 VICE MAYOR, PAT DANDO.

13 Q. HOW LONG DID YOU WORK FOR VICE MAYOR DANDO?

14 A. I WAS WITH VICE MAYOR DANDO FROM AUGUST OF 2000
15 UNTIL DECEMBER OF 2004, SO ABOUT FOUR-AND-A-HALF YEARS.

16 Q. SO IN YOUR CAPACITY AS AN AIDE TO VICE MAYOR DANDO,
17 WHAT GENERALLY WERE YOUR RESPONSIBILITIES?

18 A. HOW LONG DO YOU HAVE?

19 Q. WE HAVE THE WHOLE AFTERNOON.

20 A. I DID EVERYTHING FROM WORKING AS A POLICY ADVISER
21 ON POLICY ISSUES RANGING FROM TRANSPORTATION, FINANCE,
22 ENVIRONMENTAL SERVICES ISSUES, COMMUNITY OUTREACH, MEDIA
23 RELATIONS, AS WELL AS INTERGOVERNMENTAL RELATIONS.

24 Q. CAN YOU GIVE US SOME SENSE OF HOW COUNCILMEMBER
25 DANDO'S STAFF WERE ORGANIZED, HOW MANY STAFF MEMBERS SHE
26 HAD, WHAT DIFFERENT POSITIONS SHE HAD.

27 A. SURE. IT WAS A VERY FLAT STRUCTURE IN THE OFFICE.
28 IT WAS THE MEMBER, AND UNDER HER WAS THE ADMINISTRATIVE

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1938

1 ASSISTANT, AND THREE POLICY AIDES, OR COUNCIL ASSISTANTS, I
2 BELIEVE, IS THE OFFICIAL TERM. AND EACH COUNCIL ASSISTANT
3 WAS RESPONSIBLE FOR DIFFERENT POLICY AREAS. PARKS AND
4 RECREATION, NEIGHBORHOOD SERVICES, LAND USE PLANNING,
5 ENVIRONMENTAL ISSUES, TRANSPORTATION ISSUES, AND THE
6 ADMINISTRATIVE ASSISTANT OVERSAW THE DAY-TO-DAY OPERATIONS
7 OF THE OFFICE, THE COUNCILMEMBER'S SCHEDULE, ROUTING MAIL,
8 AND ADMINISTRATIVE MATTERS.

9 Q. OKAY. NOW, YOU MENTIONED ONE OF YOUR AREAS OF
10 RESPONSIBILITY WAS ENVIRONMENTAL SERVICES, CORRECT?

11 A. CORRECT.

12 Q. AND SO WOULD THAT INCLUDE THE COLLECTION OF
13 RECYCLABLES AND TRASH FROM RESIDENTIAL AREAS?

14 A. YES.

15 Q. AND SO YOU WERE WORKING FOR COUNCILMEMBER DANDO IN
16 2000 WHEN THE COUNCIL CONSIDERED AWARDING NEW CONTRACTS TO
17 NEW HAULERS, CORRECT?

18 A. CORRECT.

19 Q. AND YOU WERE STILL WORKING THERE IN 2004 WHEN THE
20 COUNCIL CONSIDERED WHETHER OR NOT TO AMEND THE NORCAL
21 AGREEMENT TO PROVIDE FOR THE PAYMENT OF SOME ADDITIONAL
22 11-PLUS MILLION DOLLARS FOR ADDITIONAL LABOR COSTS, CORRECT?

23 A. YES.

24 Q. HAVE YOU EVER SPOKEN WITH AN INDIVIDUAL NAMED
25 JOHN NICOLETTI?

26 A. YES.

27 Q. AND WHO IS JOHN NICOLETTI?

28 A. AS I RECALL, HE'S THE GENERAL MANAGER FOR NORCAL.

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1939

1 Q. DO YOU RECALL WHEN YOU FIRST MET WITH
2 MR. NICOLETTI?

3 A. NO, I WOULD HAVE TO SAY I DON'T RECALL THE FIRST
4 TIME I MET WITH HIM, BUT I HAD MET WITH HIM SEVERAL TIMES
5 DURING MY TENURE WITH VICE MAYOR DANDO.

6 Q. IN YOUR SEVERAL MEETINGS WITH MR. NICOLETTI, CAN
7 YOU GENERALLY TELL US THE PURPOSE OF THOSE MEETINGS, THE
8 SUBJECTS OF THOSE MEETINGS?

9 A. I REMEMBER ONE MEETING HE CAME IN WITH ANOTHER ONE
10 OF HIS COLLEAGUES WHOSE NAME SLIPS MY MIND, SORT OF TO
11 INTRODUCE THIS NEW COLLEAGUE WHO WAS WORKING WITH HIM AND
12 SHARE WITH OUR OFFICE WHAT HAD BEEN GOING ON PER SE AT
13 NORCAL NOW THAT THEY HAD BEEN SERVICING TRASH COLLECTION IN
14 DISTRICT 10, WHICH COUNCILMEMBER DANDO REPRESENTED, FOR A
15 FEW MONTHS; I DON'T REMEMBER WHEN IT WAS, BUT TO GIVE ME A
16 BRIEFING AS TO WHAT THEY WERE DOING, HOW THINGS WERE
17 IMPROVING BECAUSE OF A ROCKY START IN 2002 WHEN THE NEW
18 PROGRAM LAUNCHED.

19 Q. DO YOU RECALL IN 2004 THE COUNCIL CONSIDERED THE
20 QUESTION ABOUT WHETHER OR NOT TO AMEND THE NORCAL AGREEMENT
21 TO PAY FOR THESE ADDITIONAL LABOR COSTS?

22 A. YES.

23 Q. AND DID YOU HAVE ANY MEETINGS WITH JOHN NICOLETTI
24 IN 2004 CONCERNING A PROPOSED AMENDMENT TO THE NORCAL
25 AGREEMENT?

26 A. YES.

27 Q. DO YOU RECALL WHEN THIS MEETING TOOK PLACE?

28 A. IT WAS IN MID-SEPTEMBER, AND IT WAS, I WANT TO SAY

1 ON A WEDNESDAY OR THURSDAY AFTERNOON. THE ONLY REASON I
2 RECALL THAT WAS THE NEXT MORNING I WAS GETTING ON A PLANE TO
3 MAUI .

4 Q. WE'RE TALKING ABOUT 2004, MID-SEPTEMBER?

5 A. CORRECT.

6 Q. WOULD THIS HAVE BEEN PRIOR TO THE SEPTEMBER 21,
7 2004 FIRST COUNCIL VOTE ON THE AMENDMENT?

8 A. YES.

9 Q. AND CAN YOU -- ARE WE TALKING LIKE A WEEK BEFORE,
10 OR A FEW DAYS?

11 A. I WOULD SAY PRIOR TO THE WEEKEND OF SEPTEMBER 17.

12 Q. WHERE DID THE MEETING TAKE PLACE?

13 A. IN A CONFERENCE ROOM ON THE SIXTH FLOOR OF THE OLD
14 CITY HALL.

15 Q. WHO ATTENDED THE MEETING?

16 A. MYSELF, MR. NICOLETTI .

17 Q. WHO ARRANGED THE MEETING?

18 A. AS I RECALL IT WAS MEETING THAT, HE HAD CALLED TO
19 MEET WITH VICE MAYOR DANDO; SHE WAS UNABLE TO ATTEND THE
20 MEETING, SO I TOOK THE MEETING FOR HER.

21 Q. WHAT TIME OF DAY DID THE MEETING TAKE PLACE?

22 A. LATE AFTERNOON.

23 Q. AND DID YOU TAKE ANY NOTES OF THE MEETING?

24 A. NO, I DID NOT.

25 Q. AND AS BEST AS YOU CAN RECALL, UNDERSTANDING THAT
26 YOU MAY NOT RECALL EXACT WORDS, WHAT DID MR. NICOLETTI SAY
27 DURING THE MEETING REGARDING THAT PROPOSED AMENDMENT?

28 A. AFTER WE HAD EXCHANGED TRADITIONAL NICETIES AND

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1941

1 TALKED ABOUT WHAT I MIGHT BE DOING IN A FEW MONTHS WHEN VICE
2 MAYOR DANDO LEFT OFFICE, HE CAME TO HIS REQUEST FOR VICE
3 MAYOR DANDO'S SUPPORT OF THE PROPOSED AMENDMENT TO THE
4 NORCAL CONTRACT.

5 Q. OKAY. SO NOW WE UNDERSTAND WHAT HIS AGENDA WAS,
6 AND WHAT DID HE SAY AS FAR AS WHY VICE MAYOR DANDO SHOULD
7 SUPPORT THE AMENDMENT?

8 A. WHAT HE TOLD ME WAS THAT THIS ITEM WAS ON THE
9 COUNCIL AGENDA BECAUSE A FEW YEARS AGO, THE MAYOR'S OFFICE
10 HAD REQUESTED HIM OR THE NORCAL STAFF -- PART OF MY MEMORY
11 IS A COUPLE YEARS AGO, I'M TRYING TO REMEMBER THE DETAILS AS
12 BEST I CAN, IS THAT THE MAYOR HAD ASKED NORCAL TO GO WITH
13 THE TEAMSTERS UNION TO DO RECYCLING, SORTING, WHATEVER IT

14 WAS. THERE WOULD BE ADDITIONAL LABOR COST, BUT NOT TO
15 WORRY, WE WILL TAKE CARE YOU OF YOU LATER, MAKE YOU WHOLE --

16 Q. JUST A MINUTE. WAS THAT THE FIRST TIME YOU HAD
17 HEARD THIS INFORMATION?

18 A. YES.

19 Q. DID MR. NICOLETTI INDICATE WHEN THE MAYOR HAD MADE
20 THAT REQUEST OF NORCAL?

21 A. APPROXIMATELY SOMETIME IN 2000, AROUND THE TIME
22 THE COUNCIL CONSIDERED THE ENTIRE GARBAGE CONTRACT PROPOSAL
23 FOR HAULERS.

24 Q. WHAT ELSE? WHAT ELSE DO YOU RECALL MR. NICOLETTI
25 SAYING?

26 A. I RECALL HIM TELLING ME HE WANTED VICE MAYOR DANDO
27 TO SUPPORT THIS, AND I ASKED HIM QUESTIONS AS TO WHY SHOULD
28 SHE SUPPORT IT GIVEN HER RECORD OF ALWAYS OPPOSING RATE

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1942

1 INCREASES ON RATEPAYERS FOR GARBAGE SERVICE WHEN THE
2 CONTRACT, SO TO SPEAK, HAD BEEN SOLD TO THE COUNCIL AS A WAY
3 TO SAVE MONEY, REDUCE COSTS, AND IMPROVE SERVICE.

4 Q. WHAT DID MR. NICOLETTI SAY IN RESPONSE TO YOUR
5 QUESTION?

6 A. I KNOW. THAT WAS ABOUT IT.

7 Q. DID HE MAKE ADDITIONAL ARGUMENTS OR AMPLIFY ON HIS
8 PREVIOUS ARGUMENT?

9 A. HE WANTED TO BE ASSURED HE COULD HAVE VICE MAYOR
10 DANDO'S SUPPORT FOR THE \$11,000,000 CONTRACT AMENDMENT. AND
11 WHEN HE STARTED TO EXPLAIN TO ME WHAT IT WAS TO PAY THE
12 DELTA BETWEEN THE TEAMSTERS AND THE LONGSHOREMEN WAGES AT
13 THEIR SORTING FACILITY, I SAID, THIS IS -- WHY WASN'T THIS
14 EVER DISCUSSED PRIOR?

15 HE SAID, THAT'S NOT MY CALL TO MAKE. THE MAYOR
16 TOLD US WHEN WE MET WITH HIM IN 2000, PLEASE DO THIS AND
17 WE'LL MAKE YOU WHOLE SOMEHOW.

18 AND KEEP IN MIND I'M PARAPHRASING WHAT I HEARD
19 FROM MR. NICOLETTI. I DON'T RECALL.

20 Q. THAT WAS YOUR UNDERSTANDING OF WHAT WAS SAID; IT'S
21 NOT MEANT TO BE A VERBATIM ACCOUNT OF THE WORDS, CORRECT?

22 A. CORRECT.

23 Q. THAT'S YOUR BEST RECOLLECTION OF THE IMPORT OF WHAT
24 HE SAID?

25 A. CORRECT.

26 Q. DID HE SAY ANYTHING ELSE REGARDING NORCAL, THE
27 AMENDMENT, THE ADDITIONAL LABOR COSTS, THINGS OF THAT SORT?

28 A. THE ONLY THING HE KEPT SAYING AGAIN AND AGAIN WAS

1 THAT THIS WAS AN ARRANGEMENT THEY HAD MADE IN THE MAYOR'S
2 OFFICE WITH JOE GUERRA, THE MAYOR'S BUDGET AND POLICY CHIEF,
3 I DON'T KNOW IF HE STILL IS, AND HE WAS TRYING TO ASSURE
4 PAT'S SUPPORT KNOWING HER OPPOSITION TO PAST RATE INCREASES
5 ON GARBAGE RATES THAT WERE CHARGED TO SAN JOSE RESIDENTS.

6 Q. OKAY. IS THERE ANYTHING ELSE THAT YOU CAN RECALL
7 OF THAT CONVERSATION WITH MR. NICOLETTI AT THAT TIME?

8 A. THE ONLY THING I CAN RECALL IS I TOLD HIM I WILL
9 TAKE THIS TO THE VICE MAYOR AND SHARE IT WITH HER, AND HAVE
10 A NICE DAY. I WAS A LITTLE --

11 Q. YOU WERE WHAT?

12 A. I WAS SHOCKED.

13 Q. YOU WERE SHOCKED?

14 A. THAT I WAS GOING TO HAVE TO GO IN THERE -- I DIDN'T
15 KNOW HOW I WAS GOING TO COUCH THIS, KNOWING HER OPPOSITION
16 TO RATE INCREASES, AND HER SKEPTICISM, KNOWING THE WAY THE
17 SERVICES WERE SOLD TO THE COUNCIL FOUR YEARS PRIOR.

18 Q. WHAT DID YOU MAKE OF THE DISCLOSURE THE MAYOR HAD
19 MADE SOME ARRANGEMENT YOU HADN'T HEARD ABOUT BEFORE, BACK IN
20 2000, CONCERNING SWITCHING UNIONS AND GETTING EXTRA MONEY
21 FOR THE SWITCH?

22 A. I DIDN'T REALLY MAKE ANYTHING OF IT. I TOOK IT AS
23 A FACT, WHAT HE TOLD ME, AND I INCLUDED IT IN MY
24 CONVERSATION OR BRIEFING WITH VICE MAYOR DANDO.

25 Q. AFTER YOU HAD THAT MEETING WITH JOHN NICOLETTI, DID
26 YOU BRIEF VICE MAYOR DANDO ABOUT THE MEETING?

27 A. I BRIEFED HER BRIEFLY, YES. WE TALKED ABOUT TWO
28 MINUTES.

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1944

1 Q. WHEN WAS THAT?

2 A. IMMEDIATELY FOLLOWING THE MEETING.

3 Q. SO IS IT THE CASE THAT SHE WAS NOT AVAILABLE TO
4 MEET WITH MR. NICOLETTI, OR SHE DIDN'T WANT TO MEET WITH
5 HIM?

6 A. AS I RECALL, SHE WAS NOT AVAILABLE AT THAT TIME.
7 SOMETHING ELSE HAD COME ON HER SCHEDULE.

8 Q. WHAT DID YOU TELL VICE MAYOR DANDO THAT HAPPENED AT
9 THIS MEETING WITH MR. NICOLETTI?

10 A. I RECOUNTED MY CONVERSATION WITH HIM TO HER, TOLD
11 HER THAT HE IS COMING AND ASKING FOR YOU TO SUPPORT THE ITEM
12 ON TUESDAY'S AGENDA, WHICH IS THE \$11,000,000 AMENDMENT TO
13 THE NORCAL CONTRACT. HE SAID THAT THEY MADE AN ARRANGEMENT
14 WITH THE MAYOR'S OFFICE A FEW YEARS AGO, IF THEY SWITCHED
15 UNIONS FROM LONGSHOREMEN TO TEAMSTERS THAT THERE WAS, YES,
16 THIS COST DIFFERENTIAL, BUT NOT TO WORRY, THE MAYOR'S OFFICE
17 WOULD TAKE CARE OF MAKING THIS UP, AND THAT'S WHAT THIS IS.

18 I SAID TO HER, I THINK IT'S FUNNY WE HAD A SERIES
19 OF RATE INCREASES -- I WAS TRYING TO MAKE THE CONNECTION FOR
20 HER -- THE RATE INCREASES WERE DESIGNED TO SAVE MONEY FOR
21 PAYING THE \$11,000,000 THAT THE COUNCIL WOULD CONSIDER IN A
22 FEW DAYS.

23 Q. WHAT DID VICE MAYOR DANDO SAY WHEN YOU BRIEFED HER
24 ON YOUR MEETING WITH MR. NICOLETTI?

25 A. I BELIEVE HER WORDS WERE, THAT'S VERY INTERESTING.
26 I NEVER HEARD ANYTHING OF IT BEFORE.

27 Q. DID YOU HAVE, BEFORE THE SEPTEMBER 16, 2004 VOTE ON
28 THE AMENDMENT, DID YOU HAVE ANY ADDITIONAL COMMUNICATIONS

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1945

1 WITH MR. NICOLETTI?

2 A. IN BETWEEN THE TIME I MET WITH HIM ON SEPTEMBER 16?

3 Q. YES.

4 A. NO.

5 Q. SO DID YOU ATTEND THE COUNCIL MEETING ON SEPTEMBER
6 16, 2004, WHEN THE COUNCIL TOOK UP THE QUESTION OF WHETHER
7 OR NOT TO AMEND THE NORCAL AGREEMENT?

8 A. IF I RECALL CORRECTLY, I WAS IN MAUI AT THE TIME.

9 Q. I SEE. JUST A MOMENT. DID YOU EVER SPEAK WITH

10 ANYONE FROM THE MAYOR' S OFFICE TO TRY AND CONFIRM WHAT
11 JOHN NICOLETTI HAD TOLD YOU?

12 A. NO.

13 Q. SO YOU WERE IN HAWAII?

14 A. AT THE END OF THE DAY I WAS ALREADY IN A T-SHIRT.

15 Q. HOW LONG WERE YOU ON VACATION?

16 A. I CAME BACK, I BELIEVE, WEDNESDAY OR THURSDAY THE
17 FOLLOWING WEEK, SO A DAY OR TWO AFTER THAT COUNCIL MEETING.

18 Q. DID YOU SPEAK WITH VICE MAYOR DANDO ABOUT WHAT
19 HAPPENED AT THE COUNCIL MEETING ON THE REQUEST TO AMEND THE
20 NORCAL AGREEMENT?

21 A. I DON' T RECALL. I REMEMBER READING ABOUT IT IN THE
22 PAPER. THAT WAS ABOUT THE EXTENT OF WHAT I REMEMBER
23 POST-MEETING AND POST-VACATION.

24 Q. NOW, THERE WAS A SECOND VOTE ON THE AMENDMENT IN
25 DECEMBER, DECEMBER 14, 2004. DO YOU RECALL THAT?

26 A. VAGUELY, YES.

27 Q. DID YOU HAVE ANY FURTHER DISCUSSIONS WITH
28 MR. NICOLETTI BETWEEN THE TIME OF THE MEETING YOU TOLD US

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1946

1 ABOUT JUST BEFORE THE FIRST VOTE AND THE TIME OF THE SECOND
2 MEETING?

3 A. NOT THAT I RECALL, NO.

4 Q. DID YOU SPEAK TO ANYONE FROM ELSE FROM NORCAL
5 BETWEEN THE TIME OF YOUR MEETING WITH MR. NICOLETTI AND THE
6 SECOND VOTE IN DECEMBER 2004?

7 A. NOT THAT I CAN RECALL.

8 Q. DID YOU HAVE FURTHER DISCUSSIONS WITH COUNCILMEMBER
9 DANDO ABOUT THIS AMENDMENT ISSUE AFTER YOU BRIEFED HER ABOUT
10 YOUR MEETING WITH NORCAL, MR. NICOLETTI, AND RETURNED BACK
11 FROM VACATION?

12 A. NO. UNLESS YOU'RE TALKING ABOUT SPECIFIC SIT-DOWN
13 CONVERSATIONS ON THE ISSUE, I DON'T RECALL ANY OF THOSE.
14 WHAT I DO REMEMBER IS TALKING, CONTINUING TO MAKE THE
15 CONNECTION WITH HER THAT, POLITICALLY, YOU HAVE OPPOSED
16 THESE RATE INCREASES; IT WOULD LOOK SKEPTICAL IF YOU WERE TO
17 SUPPORT AN \$11,000,000 AMENDMENT TO MAKE THE, QUOTE, NORCAL
18 CONTRACT MORE EXPENSIVE WHEN YOU WERE TRYING TO MAKE IT LESS
19 EXPENSIVE, SO TO SPEAK.

20 Q. RIGHT. WHAT I'M TRYING TO UNDERSTAND, MAYBE YOU
21 CAN ENLIGHTEN ME ON THIS QUESTION, MAYBE YOU CAN'T. WE'VE
22 SEEN A SEPTEMBER 16 MEMO FROM MAYOR GONZALES TO THE COUNCIL
23 URGING THE PASSAGE OF THE AMENDMENT TO THE AGREEMENT. AND
24 IT APPEARS THAT COUNCILMEMBER DANDO HAS CO-SIGNED THIS MEMO.
25 DO YOU SEE THAT?

26 A. I DO.

27 Q. WE'RE LOOKING AT EXHIBIT 99. DO YOU KNOW WHY IT IS
28 OR HOW IT CAME TO BE THAT COUNCILMEMBER DANDO DECIDED TO

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1947

1 SUPPORT THE NORCAL REQUEST FOR THIS \$11,000,000 AMENDMENT?

2 A. NO, I DON'T. THAT, I BELIEVE SEPTEMBER 16 WAS THE
3 DAY I LEFT FOR VACATION, AND SEPTEMBER -- I HAVE A CALENDAR
4 IN FRONT OF ME -- I BELIEVE THE 15TH WAS WEDNESDAY, THAT WAS
5 THE DAY I MET WITH MR. NICOLETTI, THE 16TH WAS THE MORNING I
6 LEFT FOR MAUI. I CAME BACK ONLY TO SEE HER SIGNATURE ON THE
7 MEMO.

8 Q. THIS DIDN'T HAPPEN ON YOUR WATCH?

9 A. NO.

10 Q. WHEN YOU CAME BACK, DID YOU HAVE A DISCUSSION WITH
11 THE COUNCILMEMBER CONCERNING WHY SHE HAD DECIDED TO SUPPORT
12 THIS REQUEST FOR AN \$11,000,000 AMENDMENT?

13 A. IT WAS A VERY BRIEF CONVERSATION. I ASKED HER, I
14 SAID, I CAN'T BELIEVE YOU SIGNED THIS.

15 SHE SAID, IF I UNDERSTAND IT CORRECTLY, THERE IS
16 NO DEAL WITH LABOR; THIS IS TO HELP PAY THE DIFFERENT COSTS
17 FOR THE EMPLOYEES. THIS MONEY WILL ALL GO BACK TO THE
18 EMPLOYEES.

19 I BELIEVE, TOO, SHE RECITED THE FIRST LINE OF THE
20 MEMO WHERE WE'RE ASKING THE MANAGER AND THE ATTORNEY TO GO

21 BACK AND WORK WITH NORCAL, NOT JUST CUT A CHECK FOR
22 \$11,000,000.

23 Q. ISN'T THAT WHAT HAPPENED? THERE WAS NO
24 NEGOTIATION, THEY VERIFIED THE NUMBERS, AND WHAT'S THE
25 AMENDMENT PROVIDED FOR.

26 A. I CAN'T SPEAK TO WHAT HAPPENED WITH THE MANAGEMENT
27 OR ATTORNEY OF NORCAL.

28 Q. FAIR ENOUGH. DO YOU RECALL THAT IN THE YEAR 2000,

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1948

1 WHEN THE COUNCIL TOOK UP THE AWARD OF THESE RECYCLE PLUS
2 AGREEMENTS, IN LATE OCTOBER THERE WAS A MEMO FROM THE CITY
3 ATTORNEY ABOUT WHETHER OR NOT THE CITY COULD LAWFULLY
4 REQUIRE A CONTRACTOR TO RECOGNIZE A PARTICULAR UNION OR SIGN
5 A NEUTRALITY AGREEMENT? DO YOU RECALL THAT?

6 A. NO, I DON'T.

7 MR. FINKELSTEIN: LET ME SEE IF THE JURORS HAVE
8 ANY QUESTIONS FOR YOU. I THINK YOU'RE IN LUCK.

9 WE'RE NOT EXCUSING WITNESSES, WHICH MEANS YOU'RE
10 SUBJECT TO BEING RECALLED SHOULD WE THINK OF ADDITIONAL
11 QUESTIONS WE WOULD LIKE TO ASK YOU, BUT YOU ARE FREE TO GO
12 IN A MOMENT. THE FOREPERSON IS GOING TO READ AN ADMONITION
13 REGARDING THE SECRECY OF GRAND JURY PROCEEDINGS, SO PLEASE

14 LISTEN CAREFULLY.

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

24 DO YOU UNDERSTAND THAT?

25 THE WITNESS: YES.

26 MR. FINKELSTEIN: IF YOU ARE REPRESENTED BY
27 COUNSEL -- I DON'T THINK YOU ARE, BUT IF YOU ARE -- YOU
28 COULD SHARE THE INFORMATION WITH YOUR COUNSEL AS LONG AS HE

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1949

1 OR SHE AGREES NOT TO MAKE A FURTHER DISCLOSURE OF THE
2 INFORMATION. DO YOU UNDERSTAND THAT?

3 THE WITNESS: YES.

4 MR. FINKELSTEIN: DO YOU HAVE ANY QUESTIONS ABOUT
5 THE ADMONITION?

6 THE WITNESS: NO.

7 MR. FINKELSTEIN: DO YOU UNDERSTAND YOU CAN'T
8 DISCUSS THIS WITH ANYONE; SPOUSES, FRIENDS, ACQUAINTANCES?

9 THE WITNESS: NEVER. IF ASKED IF I APPEARED,
10 SHALL I DENY THAT?

11 MR. FINKELSTEIN: YOU CAN DENY IT --

12 THE WITNESS: I'M SORRY. IF SOMEBODY FROM THE
13 MERCURY NEWS SAID, HAVE YOU TESTIFIED, OR HAVE YOU BEEN
14 SUBPOENAED --

15 MR. FINKELSTEIN: YOU CAN ANSWER THAT TRUTHFULLY;
16 THAT'S NOT CONFIDENTIAL, BUT WHAT QUESTIONS WERE ASKED, WHAT
17 INFORMATION YOU MAY HAVE GLEANED FROM THE QUESTIONS ASKED OF
18 YOU AND WHAT ANSWERS YOU GAVE, YOU CANNOT DISCLOSE. OKAY?

19 THE WITNESS: UNDERSTOOD.

20 MR. FINKELSTEIN: THANK YOU VERY MUCH.

21 MR. FINKELSTEIN: OUR NEXT WITNESS IS SCHEDULED TO
22 COME AT 2:00, SO LET'S TAKE A RECESS.

23 (A BRIEF RECESS WAS TAKEN.)

24 MR. FINKELSTEIN: OUR NEXT WITNESS WILL BE
25 COUNCILMEMBER CORTESE. IS THERE SOMEONE --

26 A JUROR: I DO KNOW HIM, AND HIS BROTHER WORKED
27 FOR ME, AND I KNOW HIS DAD REAL WELL.

28 MR. FINKELSTEIN: WOULD IT MAKE IT DIFFICULT FOR

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1 YOU TO BE FAIR AND IMPARTIAL IN ASSESSING HIS CREDIBILITY?

2 A JUROR: NOT REALLY. I DON'T THINK SO.

3 MR. FINKELSTEIN: WOULD IT PREVENT YOU FROM BEING
4 COMPLETELY FAIR AND IMPARTIAL IN ANY OTHER ASPECT OF
5 THIS --

6 A JUROR: NOT AT ALL.

7 DAVID CORTESE,
8 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
9 AS FOLLOWS:

10 THE WITNESS: I DO.

11 EXAMINATION:

12 BY MR. FINKELSTEIN:

13 Q. CAN YOU PLEASE TELL US YOUR FULL LEGAL NAME?

14 A. DAVID DOMINIC CORTESE.

15 Q. CAN YOU SPELL YOUR LAST NAME FOR THE REPORTER,
16 PLEASE.

17 A. C-O-R-T-E-S-E.

18 Q. MR. CORTESE, I HAVE TO ADVISE YOU OF SOME MATTERS,
19 SO PLEASE LISTEN CAREFULLY. THE GRAND JURY IS INVESTIGATING
20 THE FOLLOWING MATTERS:

21 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
22 APPROVED THE SELECTION OF NORCAL WASTE SYSTEMS OF SAN JOSE,
23 INC., ALSO KNOWN AS NORCAL, TO PROVIDE FOR THE COLLECTION OF
24 RESIDENTIAL WASTE AND RECYCLABLE MATERIALS.

25 WHAT SAN JOSE CITY OFFICIALS KNEW ABOUT INCREASED
26 COSTS THAT MIGHT ARISE FROM THE EMPLOYMENT OF TEAMSTERS TO
27 DO THE RECYCLING WORK FOR NORCAL' S SUBCONTRACTOR, CALI FORNIA
28 WASTE SOLUTIONS, INC. , OR CWS.

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1951

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 FOR THE SORTING OF RECYCLABLE MATERIALS
6 WHICH WERE NOT INCLUDED IN THE ORIGINAL AGREEMENT WITH
7 NORCAL WOULD NONETHELESS BE PAID FOR BY THE CITY OF
8 SAN JOSE.

9 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
10 APPROVED A RATE HIKE IN MAY 2003 TO PAY FOR THOSE ADDITIONAL
11 COSTS.

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

14 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
15 APPROVED A CONTRACT AMENDMENT TO THE NORCAL AGREEMENT IN
16 2004 TO PAY FOR ADDITIONAL COSTS RELATED TO THE USE OF

17 TEAMSTERS FOR THE SORTING OF RECYCLABLE MATERIALS.

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

21 YOU ARE A SUBJECT OF THE GRAND JURY' S
22 INVESTIGATION. BY THAT I SIMPLY MEAN YOU' RE A PERSON WHOSE
23 CONDUCT IS WITHIN THE SCOPE OF THE GRAND JURY' S
24 INVESTIGATION. I DO NOT MEAN TO IMPLY ANYTHING UNTOWARD OR
25 SINISTER ABOUT THAT. NONETHELESS, YOU HAVE A RIGHT TO
26 REFUSE TO ANSWER ANY QUESTION IF A TRUTHFUL ANSWER TO THE
27 QUESTION MAY TEND TO INCRIMINATE YOU.

28 ANYTHING YOU DO SAY MAY BE USED AGAINST YOU BY THE

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1952

1 GRAND JURY OR IN ANY SUBSEQUENT LEGAL PROCEEDING. AND IF
2 YOU HAVE RETAINED COUNSEL, THE GRAND JURY WILL AFFORD YOU
3 REASONABLE OPPORTUNITY TO STEP OUTSIDE THE GRAND JURY ROOM
4 AND CONSULT COUNSEL IF YOU SO DESIRE.

5 DO YOU UNDERSTAND THESE RIGHTS AS I HAVE EXPLAINED
6 THEM TO YOU?

7 A. YES.

8 Q. GOOD. WHEN WERE YOU FIRST ELECTED TO THE CITY
9 COUNCIL?

10 A. I WAS ELECTED IN THE GENERAL ELECTION IN THE FALL
11 OF 2000, NOVEMBER OF 2000. SO I TOOK OFFICE OFFICIALLY, MY
12 FIRST DAY OF WORK WAS JANUARY 3 OF 2001.

13 Q. AND YOU RAN SUCCESSFULLY FOR A SECOND TERM; IS THAT
14 CORRECT?

15 A. YES, I DID, AND THAT WAS, I WAS ELECTED IN AN
16 UNCONTESTED ELECTION OR RACE IN MARCH OF 2004 FOR A SECOND
17 FOUR-YEAR TERM.

18 Q. YOUR TERM EXPIRES WHEN?

19 A. DECEMBER 2008.

20 Q. SO YOU WERE NOT SERVING ON THE COUNCIL IN 2000 WHEN
21 THE COUNCIL CONSIDERED THE AWARD OF THESE NEW RECYCLE PLUS
22 AGREEMENTS, RIGHT?

23 A. THAT' S CORRECT.

24 Q. BUT YOU WERE ON THE COUNCIL IN 2001 WHEN THE FINAL
25 AGREEMENT WAS APPROVED BY THE COUNCIL?

26 A. THAT' S CORRECT.

27 Q. AND DO YOU RECALL THAT BEING APPROXIMATELY MARCH OF
28 2001?

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1953

1 A. THAT' S CORRECT, TO THE BEST OF MY RECOLLECTION.

2 Q. AT THE TIME YOU VOTED TO APPROVE THE NORCAL
3 AGREEMENT, DID YOU KNOW AT THAT TIME THAT NORCAL'S RECYCLING
4 SUBCONTRACTOR, CWS, HAD CHANGED UNIONS AT THE URGING OF THE
5 MAYOR?

6 A. NO.

7 Q. AT THE TIME THAT YOU VOTED FOR THE NORCAL AGREEMENT
8 IN MARCH OF 2001, DID YOU KNOW THAT THE MAYOR HAD GIVEN
9 NORCAL ASSURANCES ABOUT GETTING ADDITIONAL MONEY TO PAY FOR
10 THE ADDITIONAL LABOR COSTS CAUSED BY CHANGING UNIONS?

11 A. NO.

12 Q. NOW, IN 2002, IN DECEMBER, WAS THE CITY COUNCIL
13 ASKED TO VOTE ON WHETHER OR NOT TO RAISE THE GARBAGE RATES?

14 A. I BELIEVE SO, YES.

15 Q. WE HAVE AN EXHIBIT WE CAN SHOW YOU.

16 MR. FINKELSTEIN: I WILL ASK TO HAVE MARKED AS
17 EXHIBIT 130 A CERTIFIED COPY OF SAN JOSE CITY COUNCIL
18 MINUTES FROM TUESDAY, DECEMBER 17, 2002.

19 THE FOREPERSON: SO MARKED.

20 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
21 JURY EXHIBIT 130.)

22 MR. FINKELSTEIN: LET ME PUT THIS UP ON THE
23 SCREEN. SHOWING YOU EXHIBIT 130, DO YOU SEE THAT THESE ARE
24 THE MINUTES FOR TUESDAY, DECEMBER 17, 2002? CAN YOU SEE
25 THAT FROM WHERE YOU ARE?

26 A. YES, I CAN.

27 Q. AND LET'S LOOK AT ITEM 7.1 AT THE BOTTOM OF PAGE

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1954

1 YEAR 2002/2003 RECYCLE PLUS RATE INCREASES.

2 7.1(B) IS AN ADOPTION OF A RESOLUTION REVISING
3 R.P. RATES FOR SERVICES BEGINNING FEBRUARY 1, 2003
4 INCREASING SINGLE-FAMILY RATES BY THREE PERCENT AND
5 MULTI-FAMILY RATES BY FOUR PERCENT, AS SHOWN ON THE CHARTS.
6 DO YOU SEE THAT?

7 A. YES.

8 Q. DOES THAT REFRESH YOUR RECOLLECTION THAT IN
9 DECEMBER OF 2002 THE COUNCIL WAS ASKED TO VOTE ON WHETHER OR
10 NOT TO RAISE THE RATES THREE AND FOUR PERCENT?

11 A. YES, I THINK I RECALL THAT.

12 Q. DO YOU SEE, ACCORDING TO THE MINUTES, THE VOTE WAS
13 10 TO 1, THE ONLY NO VOTE BEING COUNCILMEMBER DIQUISTO?

14 A. YES.

15 Q. I TAKE IT YOU VOTED IN FAVOR OF THE RATE HIKE?

16 A. YES.

17 Q. THAT'S A PRETTY STANDARD RATE HIKE TO BE VOTING ON,
18 RIGHT?

19 A. RIGHT. I HAD NO INFORMATION OR RECOLLECTION AT
20 THAT TIME, OR HAVE NO RECOLLECTION NOW THAT I HAD ANY

21 INFORMATION AT THAT TIME THAT WOULD PERSUADE ME NOT TO VOTE
22 FOR IT. IT SEEMS LIKE A RELATIVELY ROUTINE RATE HIKE. I
23 KNOW THERE WAS A LOT OF QUESTIONS AND ANSWERS, PARTICULARLY
24 OF THE ENVIRONMENTAL SERVICES DIRECTOR AT THE TIME, AND I
25 CAN REMEMBER PORTIONS OF THAT VERY, VERY CLEARLY, MY
26 COLLEAGUES ASKING A LOT OF QUESTIONS ABOUT WHY THE RATE HIKE
27 NEEDED TO HAPPEN.

28 Q. AND YOUR UNDERSTANDING AT THE TIME WAS THIS WAS TO

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1955

1 COVER COSTS AND BUILT-IN COST OF LIVING INCREASES IN THE
2 AGREEMENT?

3 A. MY UNDERSTANDING WAS -- WHAT I REMEMBER MOST
4 CLEARLY IS THE ENVIRONMENTAL SERVICES DIRECTOR SAYING, IN
5 HIS OWN WORDS, OF COURSE, THE PAST RATE HIKE HAD NOT KEPT UP
6 WITH THE COST OF DOING BUSINESS AND WE NEEDED TO CATCH IT
7 UP; IF WE DID NOT CATCH UP, WE WOULD BE IN A DEFICIT.

8 Q. ESSENTIALLY, ANY SHORTFALL IN REVENUE FOR THIS
9 SERVICE HAD TO COME OUT OF THE GENERAL FUND; IS THAT HOW IT
10 WORKED?

11 A. THAT'S MY UNDERSTANDING, YES.

12 Q. IF WE LOOK AT THE RATE HIKE FOR DECEMBER 2002, THAT

13 WENT INTO EFFECT AS OF FEBRUARY 2003, CORRECT?

14 A. CORRECT.

15 Q. LET ME SHOW YOU NEXT EXHIBIT 90. HERE'S EXHIBIT
16 90, AND THESE ARE THE MINUTES FROM TUESDAY, MAY 27, 2003.
17 DO YOU SEE THAT?

18 A. YES.

19 Q. AND AN AGENDA ITEM 7.1, WHICH RELATES TO, AGAIN, A
20 RATE HIKE IN THE RECYCLE PLUS RATES, CORRECT?

21 A. YES.

22 Q. AND THIS TIME THE PROPOSED RATE HIKE IS
23 NINE PERCENT, CORRECT?

24 A. CORRECT.

25 Q. DO YOU RECALL HOW YOU VOTED ON THIS RATE HIKE?

26 A. I BELIEVE I VOTED IN FAVOR OF THE RATE HIKE.

27 Q. LET'S JUST TAKE A LOOK VERY QUICKLY AT THE MINUTES.
28 ACCORDING TO THE MINUTES, THE VOTE WAS 9 TO 1 AND 0, THE NOS

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1956

1 BEING DANDO AND GREGORY, AND COUNCILMEMBER CHIRCO WAS
2 ABSENT, CORRECT?

3 A. CORRECT.

4 Q. DOES THAT COMPORT WITH, GENERALLY, YOUR
5 RECOLLECTION?

6 A. YES.

7 Q. APPARENTLY, YOU DID VOTE IN FAVOR OF THE RATE HIKE?

8 A. THAT WOULD APPEAR TO BE CORRECT.

9 Q. WHAT DID YOU UNDERSTAND AT THAT TIME, IN MAY OF
10 2003, WAS THE PURPOSE OF THIS NINE PERCENT RATE HIKE?

11 A. MY UNDERSTANDING WAS VERY SIMILAR TO THE EARLIER
12 RATE HIKE THAT WE DISCUSSED, THAT THERE WAS SIMPLY OVERHEAD,
13 INCREASES IN COSTS THAT WE NEEDED TO MAINTAIN SO THAT THIS
14 SO-CALLED ENTERPRISE FUND, RECYCLE PLUS FUND, WOULD REMAIN
15 BALANCED AND NOT GO INTO DEFICIT.

16 Q. AND NOT DRAIN AWAY FUNDS FROM THE GENERAL FUND?

17 A. CORRECT.

18 Q. AT THE TIME YOU CAST YOUR VOTE IN FAVOR OF THE RATE
19 HIKE, DID YOU THINK THAT A RATE HIKE HAD ANYTHING TO DO WITH
20 COMPENSATING NORCAL FOR ADDITIONAL LABOR COSTS RELATED TO
21 ITS SUBCONTRACTOR SWITCHING UNIONS?

22 A. NO.

23 Q. SO WHEN YOU CAST YOUR VOTE, IT WAS YOUR BELIEF THAT
24 THIS WAS JUST MORE INCREASED COSTS THAT WERE BEING SHIFTED
25 FROM THE GENERAL FUND TO THE INTEGRATED WASTE MANAGEMENT
26 FUND?

27 A. YES.

28 Q. SO LET'S JUMP AHEAD NOW TO 2004. IN 2004, DID THE

1 CITY COUNCIL CONSIDER WHETHER OR NOT TO AMEND THE NORCAL
2 AGREEMENT TO PAY ADDITIONAL LABOR COSTS?

3 A. YES.

4 Q. NOW I'M GOING TO MARK A COUPLE OF DOCUMENTS. I
5 WILL MARK AS ANOTHER EXHIBIT A CERTIFIED COPY -- I'LL MAKE
6 SURE IT'S CERTIFIED. YES. A CERTIFIED COPY OF THE SAN JOSE
7 CITY COUNCIL MINUTES FOR TUESDAY, SEPTEMBER 7, 2004. THAT
8 WILL BE EXHIBIT 131.

9 THE FOREPERSON: SO MARKED.

10 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
11 JURY EXHIBIT 131.)

12 BY MR. FINKELSTEIN:

13 Q. LET ME SHOW YOU EXHIBIT 131 NOW. DO YOU SEE THE
14 SEPTEMBER 7, 2004 MINUTES?

15 A. YES.

16 Q. AND IF WE LOOK AT ITEM 7.1, DO YOU SEE THAT ITEM?
17 IT RELATES TO CONSIDERATION OF THE AMENDMENT OF THE NORCAL
18 AGREEMENT.

19 A. YES, I SEE THAT.

20 Q. AND DO YOU SEE THAT, ACCORDING TO THE MINUTES, THE
21 ITEM WAS DEFERRED TO SEPTEMBER 14, 2004, THE NEXT WEEK?

22 A. YES, I SEE THAT.

23 Q. DO YOU RECALL WHY IT WAS DEFERRED?

24 A. NO, I HAVE NO RECOLLECTION, AND I'M NOT SURE THAT
25 IT WAS EXPLAINED TO ME.

26 Q. OKAY. IS IT POSSIBLE THAT IT SOMETIMES HAPPENS
27 THAT ITEMS HAVE TO BE DEFERRED BECAUSE STAFF REPORTS ARE
28 LATE IN BEING PRODUCED?

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1958

1 A. YES. THAT'S SUPPOSED TO HAPPEN IN THE RULES
2 COMMITTEE ABOUT SIX DAYS BEFORE THE MEETING. AND IF THE
3 STAFF REPORT ISN'T READY BY THEN, THE RULES COMMITTEE HAS A
4 POLICY THAT SAYS THAT THE MATTER SHOULD BE TAKEN UP AT THAT
5 MOMENT SO NOBODY IS BLIND-SIDED BY A LATE REPORT.
6 UNFORTUNATELY, IT DOESN'T CONSISTENTLY HAPPEN, BUT I KNOW
7 WHEN I WAS ON THE RULES COMMITTEE WE HAD ENFORCED THAT
8 FAIRLY CONSISTENTLY. BUT AN ITEM CAN ALSO BE DEFERRED LATE
9 AT THE REQUEST OF THE MAYOR'S OFFICE, OR ANY COUNCILMEMBER
10 CAN REQUEST DEFERRAL THROUGH THE CLERK'S OFFICE.

11 AND THE WAY THE PROCEDURE USUALLY WORKS IS THE
12 AMENDED AGENDA, MEANING THE LAST AGENDA THAT'S PRESENTED TO
13 THE COUNCIL, WOULD SHOW THE RECOMMENDED DEFERRAL ON IT
14 SUBJECT TO A VOTE UNDER WHAT WE CALL ORDERS OF THE DAY.

15 Q. SO APPARENTLY THIS ITEM REGARDING THE NORCAL
16 AMENDMENT APPEARED FIRST ON SEPTEMBER 7, 2004, AND IT WAS

17 DEFERRED TO SEPTEMBER 14, CORRECT?

18 A. CORRECT.

19 Q. LET ME MARK ANOTHER EXHIBIT, A CERTIFIED COPY OF
20 THE SEPTEMBER 14 COUNCIL MINUTES. WE'LL MARK THAT AS
21 EXHIBIT 132.

22 A. CAN I CLARIFY? ON THE LAST QUESTION, I ASSUME YOU
23 ALREADY KNOW THIS, BUT I WANT TO MAKE SURE THAT, BECAUSE YOU
24 MENTIONED THAT IT COULD BE BECAUSE OF A LATE STAFF REPORT,
25 THAT IT WOULDN'T NECESSARILY HAVE BEEN DEFERRED BECAUSE OF
26 THE LATE STAFF REPORT OR ANY OTHER SIGNIFICANT --

27 Q. THAT'S ONE POSSIBILITY?

28 A. YES. IT COULD HAVE BEEN DEFERRED ON A WHIM. BASED

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1959

1 ON HOW OUR RULES WORK, IT WOULD HAVE HAD TO BE REQUESTED BY
2 SOMEBODY.

3 Q. I UNDERSTAND. I WAS JUST SUGGESTING ONE
4 POSSIBILITY IN HOPES IT MIGHT REFRESH YOUR RECOLLECTION AND
5 YOU MIGHT ILLUMINATE THAT FOR US. BUT IF YOU CAN'T, YOU
6 CAN'T; THAT'S FINE.

7 LET ME SHOW YOU EXHIBIT 132, WHICH ARE THE MINUTES
8 FROM THE FOLLOWING TUESDAY, SEPTEMBER 14, 2004. LET'S SEE

9 IF WE CAN FIND THE RELEVANT ITEM.

10 A. CAN I CLARIFY ON THE LAST QUESTION?

11 Q. SURE.

12 A. I'M SLOWLY REFRESHING MY RECOLLECTION. I DO
13 REMEMBER EXPECTING THAT ITEM TO COME FORWARD BASED ON A
14 DISCUSSION THAT I HAD WITH COUNCILMEMBER LEZOTTE PRIOR TO
15 SEPTEMBER 7. OUR OFFICES WERE SIDE BY SIDE. SHE IS THE
16 ONLY COUNCILMEMBER I TALKED TO ABOUT THE ITEM, BY THE WAY,
17 BEFORE IT CAME FORWARD, IN WHICH SHE INDICATED THAT THE ITEM
18 WAS COMING FORWARD AND SHE HAD CONCERNS ABOUT IT. SHE CAME
19 BACK TO MY OFFICE AT SOME POINT PRIOR TO THE ACTUAL COUNCIL
20 MEETING ON TUESDAY AND SAID THAT IT WAS HER UNDERSTANDING
21 THAT THE ITEM WAS GOING TO BE DEFERRED BECAUSE THE STAFF
22 REPORT WASN'T READY. SO THAT'S, SO I HAD THAT PIECE OF
23 INFORMATION, BUT I DIDN'T VERIFY THAT WITH ANYBODY OR
24 CORROBORATE THAT WITH ANYBODY ELSE.

25 Q. THANK YOU FOR CLARIFYING THAT. SO NOW, IF WE LOOK
26 AT EXHIBIT 132, THE SEPTEMBER 14, 2004 MINUTES, LOOK AT ITEM
27 7.2 ON THE SEPTEMBER 14 AGENDA, AGAIN WE SEE THE ITEM
28 RELATING TO THE AMENDMENT OF THE NORCAL CONTRACT, CORRECT?

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1960

1 A. YES.

2 Q. AND THEN APPARENTLY THE ACTION ON SEPTEMBER 14 IS
3 TO DEFER IT ANOTHER WEEK TO SEPTEMBER 21, 2004, CORRECT?

4 A. CORRECT.

5 Q. AND DO YOU RECALL WHY THAT TOOK PLACE?

6 A. NO. BUT AS YOU'RE ASKING ME THESE QUESTIONS, I NOW
7 RECALL THAT I WAS ON THE RULES COMMITTEE AT THIS TIME; I'M
8 NOT CURRENTLY. I SERVED ON THE COMMITTEE FOR A NUMBER OF
9 YEARS THAT OVERLAPPED THIS PERIOD OF TIME, AND I NOW RECALL
10 THAT AT THE RULES COMMITTEE, PRIOR TO SEPTEMBER 7, I
11 SPECIFICALLY ASKED AS WE WENT THROUGH THE DRAFT AGENDAS FOR
12 THE UPCOMING MEETINGS WHY THERE WAS AN ITEM REGARDING NORCAL
13 WASTE SYSTEMS. AND THE REASON I ASKED, AND I DON'T REMEMBER
14 THE EXACT LANGUAGE, BUT IT WAS IN MY OPINION A VERY NEBULOUS
15 CAPTION, WASN'T CLEAR WHAT WE WOULD BE TAKING UP, WHICH WAS
16 ONE OF THE REASONS I ASKED THE QUESTION OF EVERYONE IN THE
17 ROOM, IF ANYONE COULD ANSWER THE QUESTION.

18 Q. WHO WAS IN THE ROOM WHEN YOU POSED THIS QUESTION?

19 A. THE RULES COMMITTEE CONSISTED AT THAT TIME -- I
20 POSED THE QUESTION TO WHOMEVER COULD ANSWER IT. THE PERSON
21 WHO RESPONDED WAS MARK LINDER, ASSISTANT CITY MANAGER. MARK
22 LINDER INDICATED THAT HE DIDN'T KNOW. HE ACTUALLY SAID,
23 WE'RE NOT SURE WHAT THIS ITEM IS ALL ABOUT EITHER, AND WE'RE
24 LOOKING INTO IT, BUT WE WOULD LIKE TO GET BACK TO YOU NEXT
25 WEEK ON IT. THAT WAS HIS RESPONSE, AS CLOSE AS I CAN
26 REMEMBER HIS EXACT WORDS.

27 I WAS CURIOUS BECAUSE AT THE TIME IT HAD BECOME

28 APPARENT TO MOST OF THE MEMBERS OF THE COUNCIL, INCLUDING

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1961

1 ME, THAT THERE HAD BEEN A DISPUTE BETWEEN A NORCAL
2 SUBCONTRACTOR AND NORCAL, NOT REGARDING LABOR BUT REGARDING
3 RESIDUAL WASTE.

4 Q. MIXED IN WITH THE RECYCLABLES?

5 A. YES. WHAT I WAS ANTICIPATING THE RESPONSE WAS
6 GOING TO BE WAS THAT THE ITEM WAS GOING TO BRING FORTH A
7 RESOLUTION ON THE RESIDUAL WASTE AND RECYCLABLES ISSUE. AND
8 I RECALL NOW HAVING ABSOLUTELY NO IDEA IT WAS ABOUT
9 AMENDMENT OF THE CONTRACT TO PROVIDE ADDITIONAL COMPENSATION
10 TO NORCAL. IT WASN'T UNTIL LATER THAT WE FOUND OUT WHAT IT
11 WAS ACTUALLY GOING TO BE ABOUT.

12 Q. I THINK WE WILL BE GETTING TO THAT IN A MOMENT.

13 A. I THINK THAT GETS TO YOUR PREVIOUS QUESTION, THE
14 QUESTION OF WHETHER OR NOT IT HAD TO DO WITH A LATE STAFF
15 REPORT. ON THE 7TH, WHAT THE CITY MANAGER WAS SAYING
16 IMPLIED THE STAFF REPORT WAS NOT READY; OTHERWISE, HE
17 WOULDN'T HAVE SAID, I DON'T KNOW ABOUT THIS, HE WOULD HAVE
18 HAD A SIGNED STAFF REPORT. BUT HE WENT FURTHER AND SAID HE
19 DIDN'T KNOW ANYTHING ABOUT THE ITEM AT ALL.

20 Q. OKAY.

21 A. I SHOULD PROBABLY FURTHER ADD I WAS SUBSEQUENTLY --
22 AND I FOUND THIS A LITTLE BIT ODD, SUBSEQUENT TO THAT RULES
23 COMMITTEE MEETING, AND I DON'T HAVE THE EXACT DATE, BUT I
24 CAN FIND IT FOR YOU, AND I DIDN'T THINK ABOUT PROVIDING THIS
25 DOCUMENT AS PART OF THE DOCUMENT PRODUCTION REQUEST BECAUSE
26 I WOULDN'T NORMALLY HAVE MADE THE CONNECTION BETWEEN NORCAL
27 AND WHAT I'M GOING TO TELL YOU NEXT.

28 WE HAD A COUNCIL STUDY SESSION CALLED GETTING

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1962

1 FAMILIES BACK TO WORK. IT WAS HELD AT THE FOURTH STREET
2 GARAGE SUMMIT CENTER ON THE SEVENTH FLOOR. FOR WHATEVER
3 REASON WE HELD AN ACTUAL COUNCIL MEETING, STUDY SESSION
4 THERE SUBSEQUENT TO THE RULES COMMITTEE I JUST DESCRIBED.

5 JUST BEFORE THE COMMENCEMENT OF THAT MEETING, I
6 WAS APPROACHED BY JOE GUERRA, THE MAYOR'S BUDGET POLICY
7 DIRECTOR, WHO SAID TO ME, I UNDERSTAND THAT YOU ASKED A
8 QUESTION AT THE RULES COMMITTEE ABOUT THE NORCAL ITEM, THAT
9 IT WAS LISTED THERE.

10 I SAID, YEAH, I WANT TO KNOW WHAT IT IS. I ASKED
11 HIM IF IT WAS ABOUT THE RESIDUAL ISSUE, AND HE SAID IT WAS
12 NOT. SO ALMOST IMMEDIATELY AFTER HE SAID IT WAS NOT, THE

13 MEETING WAS CALLED TO ORDER; I HAD TO SIT DOWN AT THE DAIS
14 AND TAKE PART IN THE STUDY SESSION, SO THERE WAS NOT MUCH
15 SAID, ALTHOUGH I VAGUELY RECOLLECT HIM SAYING THAT HE HAD
16 MEDIATED, I THINK HE STARTED THE CONVERSATION AFTER HE ASKED
17 ME, HE SAID HE MEDIATED SOME SORT OF SETTLEMENT.

18 AND I FOLLOWED THAT WITH, DOES THAT MEAN YOU
19 SETTLED THIS CONTROVERSY ABOUT RESIDUAL WASTE BETWEEN CWS
20 AND NORCAL?

21 HE SAID NO -- I DON'T RECALL WHAT HIS RESPONSE
22 WAS. MY SENSE AFTER THAT WAS IT WAS NOT ABOUT THAT ISSUE,
23 BUT I DIDN'T GET ADDITIONAL INFORMATION AT THAT TIME.

24 Q. SO NOW LET'S MOVE ON TO SEPTEMBER 21, 2004, AND LET
25 ME SHOW YOU EXHIBIT 92, WHICH ARE THE MINUTES FOR SEPTEMBER
26 21, 2004.

27 LET ME DIRECT YOUR ATTENTION TO ITEM 7.3 ON THE
28 SEPTEMBER 21, 2004 AGENDA, AND THAT AGAIN RELATES TO THIS

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1963

1 POTENTIAL AMENDMENT TO THE NORCAL AGREEMENT, CORRECT?

2 A. YES.

3 Q. SO DO YOU RECALL THAT ON THAT DATE, ON SEPTEMBER
4 21, 2004, YOU CAST A VOTE ON THIS ISSUE?

5 A. YES.

6 Q. AND I BELIEVE THAT YOU VOTED AGAINST THE AMENDMENT;
7 IS THAT CORRECT?

8 A. THAT' S CORRECT.

9 Q. AND SO YOU OPPOSED THIS AMENDMENT?

10 A. I OPPOSED THE AMENDMENT.

11 Q. AND WOULD YOU TELL US WHY YOU OPPOSED THE
12 AMENDMENT?

13 A. BASED ON MY OWN EVALUATION, THE STAFF REPORT, AND
14 THE UNDERLYING CONTRACT WITH NORCAL, I ACTUALLY ASKED FOR A
15 COPY OF THE UNDERLYING CONTRACT WHEN WE APPROVED THE 2001 WE
16 TALKED ABOUT EARLIER.

17 Q. THE ORIGINAL AGREEMENT?

18 A. YES, I ASKED FOR THE ORIGINAL AGREEMENT, WHICH IS
19 NOT UNLIKE ME; I'M AN ATTORNEY BY EDUCATION AND I HAVE A
20 TENDENCY TO ASK FOR UNDERLYING DOCUMENTS.

21 I ASKED FOR THE ORIGINAL CONTRACT, AND I COMPARED
22 THAT TO THE STAFF REPORT, AND THE CONCLUSION I CAME TO IS
23 THAT IT WOULD BE A GIFT OF PUBLIC FUNDS TO APPROVE THE
24 AMENDMENT.

25 Q. WHY DID YOU FEEL THAT WAY?

26 A. BECAUSE IT SEEMED CLEAR TO ME BASED ON MY OWN
27 ANALYSIS THAT THE UNDERLYING CONTRACT CONTEMPLATED THAT ALL
28 THE SERVICES THAT WE NEEDED WOULD BE DELIVERED BY NORCAL FOR

1 THE CONSIDERATION OF THE COMPENSATION THAT HAD PREVIOUSLY
2 BEEN VOTED ON AND APPROVED.

3 IT SEEMED THE ONLY WAY THAT YOU COULD QUALIFY
4 NORCAL FOR ANY ADDITIONAL FUNDING WOULD BE IF THERE WAS
5 EQUAL CONSIDERATION THAT NORCAL WAS PROVIDING TO THE CITY OF
6 SAN JOSE.

7 THE STAFF REPORT, AS I RECALL, SPOKE TO WHAT
8 LAWYERS MIGHT REFER TO AS A PEPPERCORN CONSIDERATION, SOME
9 TOKEN CONSIDERATION, AS IF WE WERE JUST TRYING TO BIND A
10 CONTRACT TOGETHER. BUT MY ANALYSIS WAS THAT WHAT IT TAKES
11 TO BIND A CONTRACT TOGETHER DOESN'T NECESSARILY SATISFY THE
12 LARGER REQUIREMENT, PUBLIC POLICY REQUIREMENT, THAT WE GET
13 EQUAL BENEFIT OF THE BARGAIN TO WHAT NORCAL GETS WHEN WE'RE
14 DEALING WITH TAXPAYER MONEY. THAT'S WHERE I FELT THERE WAS
15 A DEFICIENCY IN THE DEAL.

16 Q. OKAY. NOW, THIS CONSIDERATION THAT YOU
17 CHARACTERIZE AS A TOKEN CONSIDERATION, THIS WAS THE TEN
18 ADDITIONAL NEIGHBORHOOD CLEANUP BINS AND E-WASTE SCRAP
19 PROGRAM AND MATERIALS COMPOSITION STUDY. IS THAT WHAT
20 YOU'RE REFERRING TO?

21 A. YES.

22 Q. WOULD IT BE FAIR TO SAY THAT, EVEN THOUGH THERE'S
23 RECITALS ABOUT THAT CONSIDERATION, THE THRUST OF THE

24 DISCUSSION BEFORE THE COUNCIL WHEN THE PITCH WAS MADE TO
25 JUSTIFY THIS WAS CENTERED ON THE ADDITIONAL LABOR COST, NOT
26 THESE OTHER, AS YOU DESCRIBED, TOKEN CONSIDERATIONS?

27 A. YES. THAT WOULD BE CORRECT. THE REAL DELIBERATION
28 THAT SEEMED TO BE OCCURRING BOTH INSIDE AND OUTSIDE THE

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1965

1 COUNCIL CHAMBERS, AND WHEN I SAY OUTSIDE I MEAN IN TERMS OF
2 PUBLIC COMMENTS THAT WERE BEING MADE BY INDIVIDUALS IN THE
3 PRESS AND SO FORTH, SEEMED TO BE FOCUSED ALMOST EXCLUSIVELY
4 ON THE ISSUE OF WHETHER OR NOT WE SHOULD HAVE TEAMSTER
5 LABOR, OR WHETHER TEAMSTERS SHOULD BE COMPENSATED VERSUS
6 WHETHER THEY SHOULD NOT BE COMPENSATED. AND AGAIN, LOOKING
7 AT THE UNDERLYING CONTRACT, I FELT THAT IT WASN'T OUR
8 RESPONSIBILITY TO PAY ANY MORE MONEY TO HAVE THE TEAMSTERS
9 COMPENSATED.

10 I DIDN'T HAVE AN ISSUE WITH WHETHER OR NOT THE
11 TEAMSTERS SHOULD BE THERE; MY CONCERN WAS THAT NORCAL
12 ENTERED INTO THAT AGREEMENT WITH THEIR EYES WIDE OPEN,
13 KNOWING THAT THEY HAD TO COVER THEIR LABOR COSTS. AND IF
14 THEY FURTHER ENTERED INTO A SUBCONTRACT WITH SOMEBODY,
15 THAT'S THEIR BUSINESS. THAT SHOULDN'T PUT AN ADDITIONAL

16 BURDEN ON THE CITY OF SAN JOSE.

17 Q. AS A MATTER OF FACT, THERE WAS DISCUSSION AT THE
18 COUNCIL MEETING ABOUT WHETHER THE NUMBERS WERE ACCURATE, AND
19 IS IT NOT THE CASE THAT THE NUMBERS WERE, ALL HAD TO DO WITH
20 THE ADDITIONAL LABOR COSTS?

21 A. THAT'S MY RECOLLECTION. AND I KNOW I PERSONALLY
22 QUESTIONED DURING THE MEETING WHETHER OR NOT THOSE NUMBERS
23 WERE ACCURATE.

24 Q. I UNDERSTAND, BUT THE NUMBERS HAD NOTHING TO DO
25 WITH THE TEN ADDITIONAL NEIGHBORHOOD CLEANUP BINS OR E-WASTE
26 SCRAP PROGRAM OR MATERIALS COMPOSITION STUDY?

27 A. LITTLE TO NOTHING TO DO WITH THOSE ITEMS. BASED ON
28 THE KNOWLEDGE I HAD AT THE TIME, AND NOTHING HAS CHANGED

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1966

1 SINCE THEN, IT WAS MY BELIEF THAT THOSE ITEMS YOU JUST
2 DESCRIBED, THE NON-LABOR ITEMS WOULDN'T ADD UP TO ANYWHERE
3 NEAR \$11,000,000 IN VALUE.

4 Q. OKAY. PRIOR TO CASTING YOUR VOTE ON SEPTEMBER 21,
5 2004, DID YOU HAVE THE OPPORTUNITY TO REVIEW A MEMO FROM
6 MAYOR GONZALES IN SUPPORT OF AMENDING THE NORCAL AGREEMENT?

7 A. YES, I BELIEVE SO.

8 Q. LET ME SHOW YOU WHAT HAS BEEN MARKED AS EXHIBIT 42.

9 DOES THIS APPEAR TO BE A COPY OF THE MEMO FROM MAYOR
10 GONZALES?

11 A. YES. AND I DO RECALL REVIEWING IT AT THE TIME.

12 Q. JUST GIVE US A MOMENT. WE HAVE A CERTIFIED COPY OF
13 EXHIBIT 99. LET ME DISPLAY THAT FOR YOU.

14 THIS IS A LITTLE BETTER. CAN YOU SEE THAT?

15 A. YES.

16 Q. NOW, LET ME DIRECT YOUR ATTENTION TO A PASSAGE IN
17 THE MEMO WHICH BEGINS ON THE SECOND FULL PARAGRAPH OF PAGE
18 TWO, AND READS:

19 HOWEVER, IT SOON BECAME CLEAR THAT THE
20 SITUATION WAS MORE COMPLEX.

21 DO YOU SEE THAT?

22 A. YES.

23 Q. IT GOES ON:

24 AFTER COUNCIL APPROVAL, THE MAYOR'S OFFICE
25 LEARNED THAT THE WORKERS TO BE RETAINED FROM WASTE
26 MANAGEMENT WOULD BE EXPECTED TO CHANGE UNIONS. IT
27 WAS THEN LEARNED THAT THIS WOULD MEAN THE RETAINED
28 WORKERS WOULD BE TAKING A PAY CUT. THIS WOULD BE

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1967

1 UNTENABLE FOR VENDOR, WORKERS, THE UNIONS, AND THE
2 CITY, BECAUSE THE RESULT COULD NOT MEET THE
3 COUNCIL'S DESIRE TO HAVE BOTH WORKER RETENTION AND
4 LABOR PEACE.

5 TO CONFORM TO COUNCIL DIRECTION, THE MAYOR'S
6 OFFICE CONVENED A MEETING BETWEEN NORCAL AND THE
7 LEADERSHIP OF THE TEAMSTER'S LOCAL AND A
8 REPRESENTATIVE OF THE CENTRAL LABOR COUNCIL TO
9 IDENTIFY SOLUTIONS OF THE JURISDICTIONAL ISSUE.
10 AS A RESULT, NORCAL AGREED TO WORK WITH CWS AND
11 WITH THE TEAMSTERS FOR THE WORKERS TO BE RETAINED.
12 EVENTUALLY, THE JURISDICTIONAL ISSUE WAS RESOLVED
13 WITH A NEUTRALITY AGREEMENT THAT CWS SIGNED WITH
14 THE TEAMSTERS, AND THE TEAMSTERS WERE SELECTED BY
15 THE WORKERS TO MAINTAIN JURISDICTION.

16 DO YOU SEE ALL THAT IN THE MEMO?

17 A. YES.

18 Q. AND DO YOU RECALL REVIEWING THIS AT THE TIME OF THE
19 SEPTEMBER 21, 2004 VOTE?

20 A. YES, I DO.

21 Q. SO WHEN YOU READ THIS PORTION OF THE MEMO, WHICH
22 COUNCIL APPROVAL DID YOU THINK THE MAYOR WAS REFERRING TO IN
23 HIS STATEMENT?

24 AFTER COUNCIL APPROVAL, THE MAYOR'S OFFICE
25 LEARNED THAT THE WORKERS TO BE RETAINED FROM WASTE
26 MANAGEMENT WOULD BE EXPECTED TO CHANGE UNIONS. IT

27 WAS THEN LEARNED THIS WOULD MEAN THE RETAINED
28 WORKERS WOULD BE ASKED TO TAKE A PAY CUT.

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1968

1 A. I DIDN'T KNOW WHAT IT MEANT, BUT AGAIN, MY OWN
2 ANALYSIS OF THE CITY'S CONTRACTUAL RELATIONSHIP WITH NORCAL
3 AT THAT POINT HAD LED ME TO BELIEVE THAT THERE WAS AN ISSUE
4 ABOUT WORKER RETENTION AND PEOPLE HAVING TO TAKE A PAY CUT;
5 THAT WAS THE RESPONSIBILITY OF NORCAL, NOT THE
6 RESPONSIBILITY OF THE CITY OF SAN JOSE.

7 Q. I UNDERSTAND. SO YOU DIDN'T HAVE A CLUE WHEN YOU
8 READ THIS AS TO WHICH COUNCIL APPROVAL THE MEMO MIGHT HAVE
9 BEEN REFERRING TO WHEN IT SAID, AFTER COUNCIL APPROVAL IT
10 WAS LEARNED, ET CETERA?

11 A. I DON'T REMEMBER WHAT I THOUGHT THEN. IF I WAS
12 READING IT FOR THE FIRST TIME TODAY, I WOULD ASSUME THAT
13 MEANT AFTER THE CONTRACT APPROVAL THAT WE DISCUSSED IN MARCH
14 OF 2001. THAT'S HOW I WOULD NORMALLY INTERPRET THAT KIND OF
15 LANGUAGE.

16 Q. WHEN YOU REVIEWED THE ORIGINAL CONTRACT, DO YOU
17 RECALL SEEING WHAT LAWYERS SOMETIMES CALL AN INTEGRATION
18 CLAUSE, A CLAUSE THAT SAYS THIS WRITTEN AGREEMENT SUPERSEDES
19 ANY PRIOR UNDERSTANDINGS OR REPRESENTATIONS?

20 A. YES, I DO RECALL THAT.

21 Q. SO DO YOU RECALL WHETHER OR NOT YOU GAVE ANY
22 CONSIDERATION TO WHEN THIS CAME TO LIGHT, BECAUSE IF IT CAME
23 TO LIGHT BEFORE THE CONTRACT WAS APPROVED, IT WOULD HAVE
24 BEEN SUPERSEDED BY THE CONTRACT, RIGHT?

25 A. THAT WAS MY ANALYSIS EXACTLY.

26 Q. THAT WAS YOUR ANALYSIS?

27 A. YES.

28 Q. SO IN THIS MEMO IN THAT SAME PARAGRAPH, THE MAYOR

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1969

1 HAS ALSO SAID:

2 TO CONFORM TO COUNCIL DIRECTION, THE MAYOR'S
3 OFFICE CONVENED A MEETING BETWEEN NORCAL AND THE
4 LEADERSHIP OF TEAMSTERS LOCAL, ET CETERA.

5 DO YOU SEE THAT LINE?

6 A. YES.

7 Q. WHAT COUNCIL DIRECTION DID YOU THINK THE MAYOR WAS
8 REFERRING TO IN THIS STATEMENT?

9 A. WELL, I THOUGHT HE WAS REFERRING TO THE DIRECTION
10 IN THE ORIGINAL CONTRACT THAT THERE SHOULD BE WORKER
11 RETENTION AND LABOR PEACE.

12 Q. TO YOUR KNOWLEDGE, DID THE CITY COUNCIL EVER GIVE
13 ANY DIRECTION REGARDING WHICH UNION NORCAL'S SUBCONTRACTOR,
14 CWS, SHOULD RECOGNIZE?

15 A. NO.

16 Q. WAS THERE ANYTHING IN THE MAYOR'S MEMO THAT TO YOU
17 AT THE TIME SUGGESTED THAT THE MAYOR HAD URGED NORCAL TO
18 HAVE ITS SUBCONTRACTOR SWITCH FROM LONGSHOREMEN TO
19 TEAMSTERS?

20 A. NOT NECESSARILY.

21 Q. WAS THERE ANYTHING IN THE MAYOR'S MEMO THAT
22 SUGGESTED TO YOU THAT THE MAYOR DID ANYTHING OTHER THAN
23 BRING THE PARTIES TOGETHER SO THAT THEY COULD WORK OUT THE
24 UNION DISPUTE ON THEIR OWN?

25 A. NO, NOT IN THE MAYOR'S MEMO.

26 Q. IN OTHER WORDS, THE IMPRESSION YOU GOT FROM READING
27 THIS REGARDING THE MAYOR'S ROLE IN RESOLVING THIS DISPUTE
28 WAS WHAT?

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1970

1 A. I THOUGHT WHAT HE WAS TRYING TO PURPORT IN THE MEMO
2 WAS A FACT PATTERN, IF YOU WILL, WHICH WOULD SUGGEST THAT HE
3 AND/OR HIS STAFF GOT INVOLVED IN TRYING TO MEDIATE A WORKER
4 RETENTION AND LABOR PEACE ISSUE THAT HAD CROPPED UP SINCE WE

5 HAD ADOPTED THE CONTRACT.

6 Q. IF WE LOOK FURTHER ON IN THE MEMO, ON PAGE THREE,
7 THE FIRST FULL PARAGRAPH, WHICH BEGINS:

8 THE HIGHER COSTS WILL NOT INCREASE RATES FOR OUR
9 RESIDENTS.

10 DO YOU SEE THAT LINE?

11 A. YES.

12 Q. WHAT -- WHERE DID YOU THINK THE MONEY FOR
13 ADDITIONAL LABOR COSTS WOULD COME FROM?

14 A. I DIDN'T KNOW WHERE IT WOULD COME FROM. AGAIN, I
15 HAD MADE THE DECISION AT THAT POINT, I WASN'T PERSUADED BY
16 THE MAYOR'S MEMO. I MADE THE DECISION THAT THE CITY OF
17 SAN JOSE SHOULDN'T BE FACILITATING ANY FURTHER PAYMENTS TO
18 NORCAL. SO I'M NOT SURE I EVER REACHED THE ISSUE OF WHERE
19 THE MONEY WOULD COME FROM IN MY OWN ANALYSIS.

20 Q. I UNDERSTAND, BUT BASED ON YOUR KNOWLEDGE OF HOW
21 THE CITY WORKS WITH REGARD TO THIS SERVICE, THERE ARE ONLY
22 TWO PLACES THE MONEY CAN COME FROM.

23 A. FROM THE GENERAL FUND OR RATEPAYERS, THAT'S
24 CORRECT.

25 Q. I THINK YOU TOLD US THE NINE PERCENT RATE INCREASE
26 YOU VOTED FOR THE YEAR BEFORE IN MAY 2003, YOU HAD NO IDEA
27 THAT RATE INCREASE, AT LEAST IN PART, WAS GOING TO BE USED
28 TO FUND THIS ADDITIONAL LABOR COST PAYMENT TO NORCAL,

1 CORRECT?

2 A. THAT'S CORRECT.

3 Q. SO GIVEN THE WAY THE FUNDING OF THE SERVICE WORKS,
4 IF THIS ADDITIONAL PAYMENT TO NORCAL WAS NOT GOING TO RAISE
5 RATES, EITHER THE RATES HAD ALREADY BEEN RAISED FOR THAT
6 PURPOSE OR MONEY WAS GOING TO COMING OUT OF THE GENERAL
7 FUND, CORRECT?

8 A. THAT WOULD BE CORRECT.

9 Q. DO YOU RECALL AT THE TIME OF THIS VOTE ON SEPTEMBER
10 16, 2004 THAT THERE WAS A MEMO FROM DEPUTY CITY MANAGER
11 JAMES HOLGERSON REGARDING THIS ISSUE?

12 A. (NO RESPONSE.)

13 Q. IF YOU DON'T RECALL, THAT'S OKAY.

14 A. I'M HAVING DIFFICULTY RECALLING.

15 Q. LET ME SHOW YOU A COPY OF THE MEMO THAT WAS MARKED
16 AS EXHIBIT 91.

17 A. YES, I SEEM TO REMEMBER SEEING THAT AT THAT TIME.

18 Q. OKAY. DO YOU HAVE ANY RECOLLECTION WHETHER OR NOT
19 THESE REPORTS AND MEMOS WERE PROVIDED TO YOU WELL IN ADVANCE
20 OF THE MEETING OR WHETHER THEY WERE PROVIDED TO YOU LATE,
21 JUST PRIOR TO THE MEETING, SO YOU MAY NOT HAVE HAD AS MUCH
22 TIME AS YOU WOULD HAVE LIKED TO REVIEW THE DOCUMENTS? DO

23 YOU REMEMBER ONE WAY OR THE OTHER?

24 A. I DON'T REMEMBER IN ABSOLUTE TERMS. MY
25 RECOLLECTION IS THAT WHEN THE DOCUMENTS FINALLY CAME OUT, WE
26 TALKED ABOUT THE SERIES OF DEFERRALS EARLIER, AND I REMEMBER
27 ASKING WHERE THE STAFF REPORT IS. MY RECOLLECTION IS THAT
28 IT CAME OUT LATE FRIDAY BEFORE THE TUESDAY COUNCIL MEETING,

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1972

1 BUT THE STAFF REPORT ITSELF, I DON'T REMEMBER WHEN THE
2 MAYOR'S MEMORANDUM CAME OUT, AND I COULDN'T GUARANTEE YOU
3 THAT THAT'S WHEN IT CAME OUT, BUT THAT'S MY RECOLLECTION.

4 Q. WELL, THE REPORT IS DATED SEPTEMBER 16, 2004,
5 CORRECT?

6 A. YES.

7 Q. AND THAT DOESN'T MEAN IT WAS DISTRIBUTED ON THAT
8 DAY; THAT'S JUST THE DATE ON THE REPORT?

9 A. THAT'S CORRECT.

10 Q. WE'RE TALKING ABOUT A MEETING ON SEPTEMBER 21?

11 A. CORRECT.

12 Q. THAT WOULD HAVE BEEN A THURSDAY BEFORE THE TUESDAY
13 COUNCIL MEETING?

14 A. THAT'S CORRECT. MY RECOLLECTION, VAGUE
15 RECOLLECTION IS, HAVING ASKED MY STAFF TO LET ME KNOW THE

16 MINUTE THE STAFF REPORT WAS RECEIVED, BECAUSE I'M IN AND OUT
17 OF THE OFFICE CONSTANTLY IN MEETINGS AND ALL OVER THE PLACE.
18 AND NOT HEARING ANYTHING FROM THEM, I HAVE A VAGUE
19 RECOLLECTION OF CHECKING IN WITH COUNCILMEMBER LEZOTTE ON
20 THE FRIDAY BEFORE, THE FRIDAY BEFORE AND SAYING, STILL NO
21 STAFF REPORT FROM NORCAL, AND I RECALL HER SAYING IT JUST
22 CAME OUT.

23 Q. YOU THINK IT WAS APPROXIMATELY FRIDAY BEFORE THE
24 TUESDAY MEETING WHEN YOU RECEIVED THE REPORT?

25 A. THAT'S MY RECOLLECTION, BUT I DON'T HAVE ANY SOLID
26 NOTES OR ANYTHING LIKE THAT TO BACK THAT UP. IT'S JUST A
27 VAGUE RECOLLECTION IN MY SITUATION.

28 Q. THANK YOU FOR QUALIFYING THAT. LET ME SHOW YOU AN

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1973

1 ATTACHMENT A TO THIS MEMO FROM JAMES HOLGERSON. IT'S A
2 LETTER DATED JULY 23, 2004, FROM NORCAL TO DEL BORGS DORF,
3 THE CITY MANAGER.

4 A. THE 26TH. YOU SAID 23RD.

5 Q. I'M SORRY. THANK YOU. DO YOU RECALL WHETHER OR
6 NOT YOU HAPPENED TO REVIEW OR READ THIS LETTER AT THE TIME
7 OF THE VOTE?

8 A. I DO REMEMBER READING THE LETTER.

9 Q. LET ME DIRECT YOUR ATTENTION TO A PASSAGE ON PAGE
10 ONE OF THIS ATTACHMENT A, THIS LETTER, AND THERE'S A
11 PARAGRAPH THAT BEGINS:

12 LET ME FIRST RECOUNT SOME BACKGROUND RELATING
13 TO THE ADDITIONAL LABOR COSTS CWS IS INCURRING.

14 DO YOU SEE THAT?

15 A. NO.

16 Q. SECOND PARAGRAPH.

17 A. OKAY.

18 Q. DO YOU SEE THAT THE PASSAGE READS?

19 LET ME FIRST RECOUNT SOME BACKGROUND RELATING
20 TO THE ADDITIONAL LABOR COSTS --

21 A. YES, I SEE THAT.

22 Q. IT SAYS:

23 WHEN NORCAL PRESENTED ITS RECYCLE PLUS
24 PROPOSAL IN RESPONSE TO THE CITY RFP IN 2000, IT
25 BECAME KNOWN THAT NORCAL'S PROPOSED RECYCLING
26 SUBCONTRACTOR, CWS, INTENDED TO HIRE WORKERS UNDER
27 A LABOR CONTRACT CWS THEN HAD IN OAKLAND WITH THE
28 LONGSHOREMEN'S UNION. UNDER THAT CONTRACT, CWS

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1 WAS PAYING ITS WORKERS CONSIDERABLY LESS THAN
2 WORKERS ORGANIZED BY THE TEAMSTERS WERE RECEIVING
3 AT THE RECYCLING FACILITY THEN IN OPERATION IN
4 SAN JOSE. THIS SIGNIFICANT WAGE DISCREPANCY,
5 ALONG WITH THE POSSIBILITY THAT SAN JOSE WORKERS
6 MIGHT LOSE THEIR JOBS, PROMPTED THE MAYOR'S OFFICE
7 TO URGE NORCAL TO EXPLORE AN ARRANGEMENT WITH CWS
8 THAT WOULD ALLOW CWS TO RETAIN EXISTING WORKERS AT
9 THE HIGHER TEAMSTERS WAGE SCALE.

10 NORCAL WAS ADVISED THAT THE CITY DID NOT WANT
11 A ROCK-BOTTOM PRICE FOR ITS NEW COLLECTION
12 CONTRACT IF DOING SO REQUIRED DISPLACING EXISTING
13 RECYCLING FACILITY WORKERS OR FORCING THOSE
14 WORKERS TO ACCEPT LOWER PAY.

15 SO HAVE I READ THAT PASSAGE CORRECTLY?

16 A. YES.

17 Q. NOW, DO YOU RECALL READING THAT PASSAGE BACK IN
18 SEPTEMBER 2004?

19 A. YES.

20 Q. WHAT DID YOU THINK THIS PASSAGE WAS SAYING AT THE
21 TIME YOU READ IT, IF YOU RECALL?

22 A. I THINK MY INTERPRETATION AT THE TIME WAS THAT
23 NORCAL BY VIRTUE OF THIS LETTER WAS INDICATING THAT THEY
24 KNEW PRIOR TO EXECUTION OF THEIR CONTRACT, THEIR MAIN
25 CONTRACT WITH THE CITY OF SAN JOSE, THAT THERE WAS A
26 POSSIBILITY THEY WERE GOING TO HAVE TO PAY MORE MONEY FOR

27 LABOR THAN WHAT CWS WAS CURRENTLY PAYING, THAT SOMEBODY WAS
28 GOING TO HAVE TO PAY TEAMSTERS' RATES INSTEAD OF

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1975

1 LONGSHOREMEN RATES.

2 Q. AND --

3 A. AND I CONCLUDED, AS I SAID EARLIER, TO ME IT MEANT
4 THEY HAD THEIR EYES WIDE OPEN, AND WHATEVER THEY BID IN THE
5 CONTRACT SHOULD HAVE INCLUDED AN ACCOMMODATION FOR THIS
6 PARTICULAR ISSUE.

7 Q. OKAY. SO IN CONNECTION WITH THIS VOTE, THERE WAS
8 ALSO A MEMO FROM COUNCILMEMBERS LEZOTTE AND REED, CORRECT?

9 A. YES.

10 Q. LET ME SHOW YOU OUR COPY, WHICH HAS BEEN MARKED AS
11 EXHIBIT 93. DO YOU RECALL SEEING A MEMO AT THE TIME OF THE
12 VOTE?

13 A. YES, I SAW THAT MEMO THE NIGHT BEFORE THE VOTE.

14 Q. OKAY. NOW, LET ME DIRECT YOUR ATTENTION
15 TO -- THERE ARE A SERIES OF NUMBERED PARAGRAPHS IN THE MEMO,
16 CORRECT?

17 A. YES.

18 Q. ITEM TWO SAYS:

19 ANY PROMISES OR REPRESENTATIONS THAT MAY HAVE
20 BEEN MADE TO NORCAL WERE NOT DISCLOSED TO THE
21 COUNCIL WHEN NORCAL WAS APPROVED AS THE PREFERRED
22 VENDOR. NOR WERE THEY DISCLOSED TO THE COUNCIL
23 BEFORE THE CONTRACT WITH NORCAL WAS APPROVED.
24 THEREFORE, THEY CANNOT BE PART OF THE CONTRACT.

25 Q. WOULD YOU AGREE WITH THAT ANALYSIS?

26 A. YES. LET ME QUALIFY THAT THIS WAY. THAT ENTIRE
27 MEMO WAS PRESENTED TO ME PRIOR TO THE COUNCIL MEETING, AND I
28 BELIEVE IT WAS THE DAY BEFORE, WITH THE OPPORTUNITY TO SIGN

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1976

1 ON TO THE MEMO, TO ADD MY NAME. IT WAS PRESENTED TO ME JUST
2 BEFORE I WAS LEAVING CITY HALL TO GO TO AN OUTSIDE MEETING,
3 SO I ASKED TO TAKE A COPY WITH ME AND ASKED FOR THE
4 OPPORTUNITY -- THIS WAS A CONVERSATION I WAS HAVING WITH
5 COUNCILMEMBER LEZOTTE -- AND I ASKED COUNCILMEMBER LEZOTTE
6 IF SHE COULD HOLD OFF LONG ENOUGH FOR ME TO THOROUGHLY
7 EVALUATE THE MEMO BECAUSE THERE WAS A LOT OF CONTENT IN IT.
8 AND THOUGH I KNEW I WAS IN GENERAL AGREEMENT WITH HER, THAT
9 THERE WERE ISSUES THAT WAS LEADING ME TO CAST A NO VOTE, AND
10 SHE WAS GOING TO CAST A NO VOTE. I WANTED TO MAKE SURE WE
11 WERE DOING IT FOR THE SAME REASONS.

12 I CALLED HER BACK LATER THAT EVENING. SHE ASKED
13 ME TO LET HER KNOW THAT I WAS PREPARED TO SIGN IT. SHE SAID
14 AT THAT TIME COUNCILMEMBER REED, SHE AND COUNCILMEMBER REED
15 HAD DECIDED TO GO AHEAD AND CIRCULATE THE MEMO, NOT WAIT ANY
16 LONGER.

17 SO THAT MIGHT HELP YOU UNDERSTAND I WAS IN GENERAL
18 AGREEMENT WITH EVERYTHING IN THIS MEMO.

19 Q. YOU WERE CONTEMPLATING SIGNING ON TO THE MEMO, BUT
20 CIRCUMSTANCES DIDN'T ALLOW IT?

21 A. RIGHT. I WAS PHYSICALLY AWAY FROM THE CITY HALL.
22 I WAS NOT IN A POSITION TO SIGN IN TIME FOR IT TO BE
23 CIRCULATED IN WHAT THEY FELT WAS A TIMELY MANNER.

24 Q. WHAT DID YOU THINK THE LEZOTTE MEMO WAS REFERRING
25 TO WHEN IT TALKED ABOUT PROMISES OR REPRESENTATIONS THAT MAY
26 HAVE BEEN MADE TO NORCAL BEFORE NORCAL WAS APPROVED AS
27 PREFERRED VENDOR? DID YOU HAVE ANY IDEA WHAT THAT REFERENCE
28 WAS TO?

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1977

1 A. IT'S MORE DIFFICULT FOR ME TO REMEMBER THE
2 SPECIFICS NOW BECAUSE SOME TIME HAS PASSED, BUT I DID HAVE,
3 AS I MENTIONED A COUPLE OF TIMES PREVIOUSLY HERE TODAY, I

4 HAVE HAD SOME CONVERSATIONS WITH COUNCILMEMBER LEZOTTE
5 REGARDING VIRTUALLY ALL THE DOCUMENTS WE'VE REVIEWED HERE
6 TODAY, RELATIVELY SHORT CONVERSATIONS, FIVE OR 10 MINUTES AT
7 A TIME, WHEREBY WE WERE COMPARING NOTES TO PUT IT -- AND
8 GENERALLY COMING TO WHAT I FELT WAS THE SAME UNDERSTANDING,
9 THAT THIS AMENDMENT SHOULD NOT BE APPROVED. SHE, DURING
10 THOSE, ONE OF THOSE DISCUSSIONS, AT LEAST ONE OF THOSE
11 DISCUSSIONS, MENTIONED TO ME THAT SHE HAD HAD A MEETING
12 WITH, I BELIEVE THE ATTENDEES WERE THE CITY MANAGER OR
13 SOMEONE FROM THE CITY MANAGER'S OFFICE, THE CITY ATTORNEY,
14 AND JOE GUERRA, IN HER OFFICE. AND THAT SHE HAD ASKED VERY
15 POINTED QUESTIONS OF THEM ABOUT WHY THIS ISSUE WAS COMING UP
16 NOW.

17 AND I BELIEVE IT WAS DURING THAT EXCHANGE BETWEEN
18 COUNCILMEMBER LEZOTTE AND ME IN TERMS OF WHAT HAPPENED
19 DURING THOSE DISCUSSIONS, WHICH IS, ESSENTIALLY SHE WAS
20 PRESENTING ME WITH HEARSAY, IF YOU WILL, ABOUT WHAT HAPPENED
21 IN HER OFFICE. I WAS NOT PRESENT AT THE MEETING. I STARTED
22 TO DEVELOP A BELIEF THAT PERHAPS THERE HAD BEEN
23 REPRESENTATIONS BEYOND WHAT HAD BEEN DISCLOSED TO US BY ANY
24 OF THE PARTIES INVOLVED.

25 Q. LET ME ASK YOU THIS. DO YOU KNOW SOMEONE NAMED
26 JOHN NICOLETTI?

27 A. I HAVE MET JOHN NICOLETTI BEFORE, YES.

28 Q. WHO IS JOHN NICOLETTI?

1978

1 A. JOHN NICOLETTI WAS ACTUALLY PRESENT. HE WORKED FOR
2 NORCAL; I DON'T REMEMBER HIS EXACT JOB TITLE. HE WAS
3 ACTUALLY PRESENT AT THE MEETING WHERE THIS AMENDMENT WAS
4 VOTED ON.

5 Q. THE COUNCIL MEETING?

6 A. YES.

7 Q. DID YOU MEET WITH JOHN NICOLETTI BEFORE THE COUNCIL
8 VOTE?

9 A. NO, CERTAINLY NOT ON THIS ISSUE. I NEVER DISCUSSED
10 THIS AMENDMENT, TO THE BEST OF MY RECOLLECTION, WITH ANY
11 NORCAL REPRESENTATIVE.

12 Q. SO YOUR RECOLLECTION IS THAT PRIOR TO THE SEPTEMBER
13 21, 2004 VOTE ON THE NORCAL AMENDMENT, YOU HAD NO
14 DISCUSSIONS WITH ANY NORCAL REPRESENTATIVES CONCERNING THIS
15 PROPOSED AMENDMENT?

16 A. NO, I DON'T RECALL EVER DISCUSSING THIS PARTICULAR
17 ISSUE WITH THEM. I DID DISCUSS WITH JOHN NICOLETTI, ONE DAY
18 IN MY OFFICE I DISCUSSED WITH HIM THE GENERAL QUALITY, IF
19 YOU WILL, OF NORCAL'S SERVICE IN MY COUNCIL DISTRICT,
20 BECAUSE THEY HAD BEEN PROVIDING RESIDENTIAL SERVICE IN MY
21 DISTRICT AND THERE HAD BEEN PROBLEMS IN THE TRANSITION
22 BETWEEN GREEN TEAM AND NORCAL IN TERMS OF BASIC CUSTOMER

23 SERVICE. AND I EXPRESSED A FEW EXAMPLES OF SOME THINGS THAT
24 HAD GONE WRONG, PEOPLE NOT RECEIVING REPLACEMENT GARBAGE
25 BINS IN TIME, THOSE DAY-TO-DAY ISSUES. AND I ALSO EXPRESSED
26 TO HIM MY CONCERN ABOUT THE RESIDUAL ISSUE THAT I BROUGHT UP
27 EARLIER.

28 Q. MY QUESTION IS SPECIFICALLY CONCERNING THE

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1979

1 BACKGROUND OF THESE ADDITIONAL LABOR COSTS. DO YOU RECALL
2 ANY DISCUSSION WITH JOHN NICOLETTI CONCERNING HOW NORCAL AND
3 ITS SUBCONTRACTOR CAME TO SWITCH UNIONS FROM THE
4 LONGSHOREMEN TO THE TEAMSTERS?

5 A. I DO NOT RECALL EVER HAVING ANY DISCUSSION ABOUT
6 THAT ISSUE WITH JOHN NICOLETTI.

7 Q. WHAT ABOUT DISCUSSIONS WITH ANY OTHER NORCAL
8 EMPLOYEES OR REPRESENTATIVES ON THAT ISSUE?

9 A. NO, THE SAME RESPONSE.

10 Q. DO YOU RECALL ANY DISCUSSIONS WITH JOHN NICOLETTI
11 CONCERNING PROMISES OR ASSURANCES THAT THE MAYOR OR SOMEONE
12 FROM THE MAYOR'S OFFICE MAY HAVE MADE TO NORCAL AS AN
13 INDUCEMENT TO GET THEM TO SWITCH UNIONS FROM LONGSHOREMEN TO
14 TEAMSTERS?

15 A. NOT THAT I RECALL.

16 Q. DO YOU RECALL ANY DISCUSSIONS ON THAT SUBJECT WITH
17 ANY OTHER NORCAL EMPLOYEES OR REPRESENTATIVES?

18 A. NO.

19 Q. PRIOR TO THE SEPTEMBER 21, 2004 VOTE ON THE NORCAL
20 AMENDMENT, DID YOU KNOW THAT ON OCTOBER 6, 2000, THE FRIDAY
21 BEFORE THE FIRST CITY COUNCIL VOTE ON THE ORIGINAL NORCAL
22 PROPOSAL, THE MAYOR TOLD NORCAL THAT HE WOULD REALLY LIKE TO
23 SEE THE CWS FACILITY BE A TEAMSTERS FACILITY AND ASKED
24 NORCAL IF THEY WOULD MAKE THAT HAPPEN?

25 A. NO, I DID NOT KNOW THAT.

26 Q. PRIOR TO THE SEPTEMBER 21, 2004 VOTE, DID YOU KNOW
27 THAT AT THIS OCTOBER 6, 2000 -- STRIKE THAT.

28 PRIOR TO THE SEPTEMBER 21, 2004 VOTE, DID YOU KNOW

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1980

1 THAT ON OCTOBER 6, 2000, THE FRIDAY BEFORE THE FIRST CITY
2 COUNCIL VOTE ON THE ORIGINAL NORCAL PROPOSAL, THE MAYOR TOLD
3 NORCAL, YOU DO IT AND WE'LL MAKE YOU WHOLE?

4 A. NO.

5 Q. THAT INFORMATION, THOSE TWO QUESTIONS I JUST ASKED
6 YOU, WOULD YOU CONSIDER THAT IMPORTANT INFORMATION FOR THE
7 COUNCIL TO HAVE KNOWN BEFORE DECIDING HOW TO VOTE ON WHETHER

8 TO AMEND THE NORCAL AGREEMENT?

9 A. CAN YOU RESTATE THE QUESTION. YOU'RE ASKING IF IT
10 WAS IMPORTANT INFORMATION?

11 Q. YES.

12 A. ABSOLUTELY.

13 Q. WHY IS THAT?

14 A. WELL, FIRST OF ALL, IMPLIED IN ANYTHING, ANY VOTE,
15 ANY HEARING THAT WE HAVE AT THE CITY COUNCIL IN MY
16 UNDERSTANDING IS THAT THE INFORMATION THAT'S PROVIDED TO US
17 AND TO THE PUBLIC THAT WE ARE RELYING ON IN MAKING THAT
18 DECISION IS COMPLETE IN TERMS OF ALL MATERIAL ISSUES THAT
19 ARE OUTSTANDING. SO ONE REASON WOULD BE IF THERE'S
20 INCOMPLETE INFORMATION PROVIDED TO THE COUNCIL, THERE'S
21 INCOMPLETE INFORMATION PROVIDED TO THE TAXPAYERS AS WELL,
22 AND YOU CAN'T POSSIBLY HAVE A PUBLIC HEARING THAT'S COMPLETE
23 IF THAT'S THE CASE, WHERE ALL THE ISSUES ARE AVAILABLE TO BE
24 OPENLY DELIBERATED.

25 Q. CAN YOU TELL US HOW YOU FIRST LEARNED THAT SOMEONE
26 FROM THE CITY HAD URGED NORCAL AND CWS TO SWITCH FROM THE
27 LONGSHOREMEN TO THE TEAMSTERS.

28 A. I THINK THAT MY FIRST REAL UNDERSTANDING OF THAT,

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1 WHEN IT FIRST BEGAN TO SINK IN WAS DURING THE PUBLIC HEARING
2 ON THE AMENDMENT DURING THE COUNCIL MEETING WHERE THIS
3 \$11,000,000 MATTER WAS TAKEN UP.

4 Q. ARE WE TALKING ABOUT THE FIRST HEARING IN SEPTEMBER
5 OR ON THE SECOND VOTE IN DECEMBER, OR DO YOU RECALL WHICH
6 ONE IT WAS?

7 A. I BELIEVE IT WAS IN SEPTEMBER, BUT IT WAS WHAT, I
8 CAN EXPLAIN WHAT WAS HAPPENING DURING THE MEETING. WHEN
9 COUNCILMEMBER LEZOTTE HAD ASKED MR. NICOLETTI TO COME
10 FORWARD TO THE PODIUM SO SHE COULD ASK HIM SOME QUESTIONS,
11 AND IT WAS ALMOST LIKE A DIRECT EXAMINATION AN ATTORNEY
12 WOULD DO. IT WAS VERY UNUSUAL IN TERMS OF OUR NORMAL
13 PROTOCOL IN COUNCIL CHAMBERS TO HAVE THAT KIND OF
14 INTERACTION, THAT KIND OF EXAMINATION GOING ON BETWEEN A
15 VENDOR AND A MEMBER OF THE CITY COUNCIL. AND SHE ASKED WHAT
16 I THOUGHT WERE SEVERAL PERTINENT QUESTIONS.

17 I FOLLOWED UP BY ASKING MR. NICOLETTI ,
18 MR. NICOLETTI DURING THAT EXCHANGE, FIRST OF ALL, WITH
19 COUNCILMEMBER LEZOTTE AS I RECALL BEGAN TO DESCRIBE, SAY IN
20 HIS OWN WORDS THAT THERE HAD BEEN REPRESENTATIONS MADE BY
21 THE CITY. THAT'S THE WAY HE SAID IT. I CLEARLY REMEMBER
22 HIS WORDS, BY THE CITY, THAT HE WOULD BE COMPENSATED FOR
23 THESE LABOR ISSUES, THAT HIS COMPANY WOULD BE COMPENSATED.

24 I REMEMBER FOLLOWING UP, ASKING FOR THE FLOOR FROM
25 COUNCILMEMBER LEZOTTE, ASKING HIM, WHEN YOU SAY THE CITY,

26 WHO ARE YOU REFERRING TO, WHO EXACTLY DID YOU COMMUNICATE
27 WITH, PARAPHRASING MY OWN WORDS AT THE TIME. AND I MAY HAVE
28 HAD TO ASK HIM THE QUESTION TWICE, BUT HE EVENTUALLY SAID

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1982

1 THAT HE WASN'T THERE WHEN THE REPRESENTATIONS WERE MADE,
2 MEANING, AND I TOOK THAT TO MEAN HE WAS NOT AN EMPLOYEE OF
3 NORCAL, BUT HE KNEW THE REPRESENTATIONS HAD BEEN MADE.

4 SO I ASKED HIM WHO HAD MADE THE REPRESENTATIONS TO
5 HIS FIRM ON BEHALF OF THE CITY.

6 HIS RESPONSE WAS THAT THE ONLY PERSON, THAT THE
7 PERSON THAT NORCAL HAD BEEN DEALING WITH WAS JOE GUERRA, THE
8 MAYOR'S BUDGET AND POLICY DIRECTOR, AND I STOPPED
9 QUESTIONING AT THAT TIME.

10 Q. NOW, DO YOU RECALL THAT THERE WAS THIS SECOND VOTE
11 IN DECEMBER OF 2004 TO FINALIZE THE AMENDMENT?

12 A. YES, I DO.

13 Q. DID YOU VOTE AGAINST IT AT THAT TIME AS WELL?

14 A. YES.

15 Q. DID YOU KNOW WHEN YOU TOOK OFFICE IN 2001 THAT IN
16 LATE 2000 THE CITY ATTORNEY HAD ISSUED AN OPINION TO THE
17 COUNCIL WHICH CONCLUDED THAT THE CITY COULD NOT LAWFULLY
18 REQUIRE A VENDOR TO RECOGNIZE A PARTICULAR UNION OR SIGN A

19 NEUTRALITY AGREEMENT?

20 A. NO.

21 Q. YOU DIDN'T KNOW THAT?

22 A. NO, I DID NOT.

23 Q. BEAR WITH US A MOMENT.

24 WE' RE GOING TO MARK AS EXHIBIT 133 A COPY OF AN
25 EDITORIAL FROM THURSDAY, OCTOBER 14, SAN JOSE MERCURY NEWS.

26 THE FOREPERSON: SO MARKED.

27 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
28 JURY EXHIBIT 133.)

SUE HERFURTH, CSR #9645

1983

1 BY MR. FINKELSTEIN:

2 Q. I WILL DISPLAY A COPY OF IT. I TAKE IT YOU READ
3 THE MERCURY NEWS?

4 A. YES.

5 Q. DO YOU RECALL READING THIS EDITORIAL BACK IN
6 OCTOBER OF 2004?

7 A. YES, I DO.

8 Q. SO THIS WOULD HAVE BEEN BETWEEN THE FIRST VOTE ON
9 SEPTEMBER 16, 2004 AND THE SECOND VOTE ON DECEMBER 14, 2004,
10 CORRECT?

11 A. THAT'S CORRECT.

12 Q. LET ME DIRECT YOUR ATTENTION, SEE IF I CAN MAKE
13 THIS MORE READABLE.

14 THERE'S A PARAGRAPH THAT READS:

15 BUT CURRENT AND FORMER NORCAL EXECUTIVES SAID
16 THEY HAD A PLEDGE OF SUPPORT FROM THE MAYOR BEFORE
17 THE COUNCIL VOTED TO AWARD THEM THE CONTRACT IN
18 2000. REMINDED OF THAT WEDNESDAY, THE MAYOR'S TOP
19 ASSISTANT JOE GUERRA CALLED THE SENTENCE IN THE
20 SEPTEMBER 16 MEMO AN INCONSISTENCY ON HIS PART.
21 IT SHOULD HAVE SAID, BEFORE COUNCIL APPROVAL, HE
22 SAID.

23 DO YOU SEE THAT PARAGRAPH?

24 A. YES.

25 Q. SO LOOKING, HAVING NOW LOOKED AT THIS TWO-YEAR-OLD
26 EDITORIAL, DOES THIS NOW REFRESH YOUR RECOLLECTION AS TO HOW
27 IT WAS YOU FIRST LEARNED IT WAS THE MAYOR WHO HAD GIVEN
28 THESE ASSURANCES TO NORCAL ABOUT EXTRA COMPENSATION?

SUE HERFURTH, CSR #9645

1984

1 A. YES. I DO BELIEVE THAT THAT DISCREPANCY CALLED OUT
2 BY THE MERCURY NEWS IS WHAT BROUGHT OUT THE -- CAUSED ME TO
3 UNDERSTAND WHAT THE TIMING WAS ON THE REPRESENTATIONS TO
Page 66

4 NORCAL.

5 MR. FINKELSTEIN: BY THE WAY, LADIES AND
6 GENTLEMEN, THIS IS JUST A NEWS ARTICLE, IT'S NOT EVIDENCE,
7 SO PLEASE BEAR THAT IN MIND. I WANT TO USE THIS TO TRY TO
8 REFRESH THE WITNESS'S RECOLLECTION.

9 Q. THERE ARE TWO THINGS BEING BROUGHT OUT HERE. ONE
10 IS THE POINT YOU RAISED, WHICH IS, CONTRARY TO THE MAYOR'S
11 MEMO, IT WASN'T LEARNED AFTER COUNCIL APPROVAL; IT WAS
12 LEARNED BEFORE THE COUNCIL APPROVAL THAT WAS THIS LABOR
13 ISSUE THAT MIGHT INVOLVE ADDITIONAL COSTS TO THE CONTRACT,
14 CORRECT?

15 A. I'M NOT UNDERSTANDING THE QUESTION, SIR.

16 Q. THIS PARAGRAPH ACTUALLY DISCLOSES TWO POINTS.

17 ONE IS THE TIMING OF REPRESENTATIONS AND WHEN THE
18 MAYOR'S OFFICE LEARNED ABOUT THIS ISSUE INVOLVING ADDITIONAL
19 COSTS. THAT'S ONE POINT.

20 A. YES.

21 Q. THE OTHER THING IS IT NAMES THE MAYOR AS THE SOURCE
22 OF THESE REPRESENTATIONS.

23 A. YES, IT DOES.

24 Q. RIGHT. SO IS THAT HOW YOU FIRST LEARNED THAT THE
25 MAYOR HAD MADE THESE REPRESENTATIONS BACK WHEN THE ORIGINAL
26 CONTRACT WAS BEING CONSIDERED BY THE COUNCIL?

27 A. YES.

28 MR. FINKELSTEIN: LET ME SEE IF THE JURORS HAVE

1 ADDITIONAL QUESTIONS. THANK YOU VERY MUCH. LET ME TELL YOU
2 A COUPLE OF THINGS. WE'RE NOT EXCUSING WITNESSES UNTIL THE
3 INVESTIGATION IS COMPLETED, WHICH MEANS YOU'RE FREE TO GO
4 TODAY, BUT ARE SUBJECT TO BEING RECALLED.

5 ALSO, DID YOU HAVE ANY -- I THINK YOUR SUBPOENA
6 REQUIRED PRODUCTION OF RECORDS, OR NOT?

7 THE WITNESS: YES.

8 MR. FINKELSTEIN: DID YOU PRODUCE THEM TO THE
9 INVESTIGATORS OUTSIDE?

10 THE WITNESS: NO, BUT WHAT WE DID AND AGREED TO DO
11 WHEN I WAS SUBPOENAED LAST THURSDAY WAS TO GIVE ALL RECORDS,
12 MOST OF WHICH WOULD HAVE BEEN CALENDAR RECORDS, GIVEN THE
13 SCOPE OF THE DOCUMENT REQUEST TO THE SAN JOSE CITY
14 ATTORNEY'S OFFICE, AND HAVE THEM --

15 MR. FINKELSTEIN: PRODUCED TO US?

16 THE WITNESS: TO COLLATE AND PRODUCE IT TO YOU.
17 AS I WAS BEING DRIVEN DOWN HERE BY MY CHIEF OF STAFF FROM MY
18 OFFICE, SHE INDICATED OUR WORK HAD ALL BEEN DONE. SHE
19 THOUGHT THAT THE CITY ATTORNEY PERSON, GEORGE RIOS, WOULD
20 HAVE ALREADY PROVIDED THE DOCUMENTS. MAYBE THEY ARE IN
21 TRANSIT.

22 MR. FINKELSTEIN: IT'S NOT A PROBLEM. WE'LL
23 REVIEW THE DOCUMENTS, AND IF WE DO NEED TO CALL YOU BACK
24 BECAUSE OF SOMETHING IN THE DOCUMENTS, PLEASE UNDERSTAND WE
25 DIDN'T HAVE THEM AVAILABLE TODAY, SO BEAR WITH US.

26 THE FOREPERSON WILL READ YOU A SECRECY ADMONITION,
27 SO PLEASE LISTEN CAREFULLY.

28 THE FOREPERSON: YOU ARE ADMONISHED NOT TO REVEAL

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1986

1 TO ANY PERSON, EXCEPT AS DIRECTED BY THE COURT, WHAT
2 QUESTIONS WERE ASKED OR WHAT RESPONSES WERE GIVEN OR ANY
3 OTHER MATTERS CONCERNING THE NATURE OR SUBJECT OF THE GRAND
4 JURY'S INVESTIGATION WHICH YOU LEARNED DURING YOUR
5 APPEARANCE BEFORE THE GRAND JURY, UNLESS AND UNTIL SUCH TIME
6 AS THE TRANSCRIPT OF THIS GRAND JURY PROCEEDING IS MADE
7 PUBLIC. VIOLATION OF THIS ADMONITION MAY BE PUNISHABLE AS
8 CONTEMPT OF COURT.

9 DO YOU UNDERSTAND THAT?

10 THE WITNESS: YES, I DO.

11 MR. FINKELSTEIN: YOU UNDERSTAND THE ADMONITION IF
12 YOU'RE REPRESENTED BY COUNSEL, YOU CAN DISCLOSE TO COUNSEL
13 PROVIDED COUNSEL AGREES NOT TO FURTHER DISCLOSE ANY
14 INFORMATION.

15 THE WITNESS: UNDERSTOOD.

16 MR. FINKELSTEIN: OKAY?

17 THE WITNESS: YES.

18 MR. FINKELSTEIN: ANY OTHER QUESTIONS FOR THE
19 WITNESS?

20 COUNCILMEMBER CORTESE, THANK YOU VERY MUCH FOR
21 APPEARING TODAY.

22 THE WITNESS: THANK YOU VERY MUCH.

23 MR. FINKELSTEIN: THAT CONCLUDES OUR WITNESSES FOR
24 TODAY. I THINK WE'RE MEETING NEXT TOMORROW AT 10:00 A.M.

25 THE FOREPERSON: YES, AND WE HAVE ALSO SCHEDULED
26 FRIDAY.

27 MR. FINKELSTEIN: I UNDERSTAND WE HAVE MORNING AND
28 AFTERNOON AVAILABLE ON FRIDAY.

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1987

1 THE FOREPERSON: THAT'S CORRECT.

2 MR. FINKELSTEIN: WE'LL PROBABLY GO MOST OF THE
3 DAY ON FRIDAY. WE HAVE A COUPLE MORE PEOPLE TOMORROW. WE
4 MAY FINISH IN THE MORNING DEPENDING HOW QUICKLY THE
5 TESTIMONY GOES, SO WE MAY OR MAY NOT BE IN SESSION TOMORROW
6 AFTERNOON, BUT FRIDAY MOST OF THE DAY.

7 FRIDAY MORNING I INTEND TO CALL BARBARA LUNA FROM
8 THE NATIONAL LABOR RELATIONS BOARD. SHE WAS MENTIONED AS
9 HAVING GIVEN SOME INFORMATION TO MR. ROTTENBERG, AND I WANT
10 TO GET HER VERSION OF THAT, AND THEN WE WILL BE RECALLING
11 BILL JONES.

12 A JUROR: WILL THAT WRAP IT UP, DO YOU THINK?

13 MR. FINKELSTEIN: I THINK IT WILL BE VERY CLOSE.

14 THE FOREPERSON: LET US ADJOURN FOR TODAY. THANK
15 YOU VERY MUCH.

16 (COURT WAS ADJOURNED FOR THE DAY.)

17

18

19

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21

22

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26

27

28

SUE HERFURTH, CSR #9645

1 SAN JOSE, CALI FORNIA MAY
2 11, 2006.

3

4

PROCEEDINGS:

5

(ROLL WAS CALLED BY THE FOREPERSON.)

6

JUDY CHIRCO,

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. CAN YOU PLEASE TELL US YOUR FULL LEGAL NAME.

13

A. JUDY LU CHIRCO.

14

Q. CAN YOU SPELL YOUR MIDDLE AND LAST NAME FOR THE

15

REPORTER, PLEASE.

16

A. MIDDLE L-U, C-H-I-R-C-O.

17

Q. MS. CHIRCO, I HAVE TO ADVISE YOU OF SOME MATTERS,

18

SO PLEASE LISTEN CAREFULLY. THE GRAND JURY IS INVESTIGATING

19

THE FOLLOWING MATTERS:

20

WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND

21

APPROVED THE SELECTION OF NORCAL WASTE SYSTEMS OF SAN JOSE,

22

INC., ALSO KNOWN AS NORCAL, TO PROVIDE FOR THE COLLECTION OF

23

RESIDENTIAL WASTE AND RECYCLABLE MATERIALS.

24

WHAT SAN JOSE CITY OFFICIALS KNEW ABOUT INCREASED

25 COSTS THAT MIGHT ARISE FROM THE EMPLOYMENT OF TEAMSTERS TO
26 DO THE RECYCLING WORK FOR NORCAL' S SUBCONTRACTOR, CALI FORNIA
27 WASTE SOLUTIONS, INC. , OR CWS.

28 WHEN SAN JOSE CITY OFFICIALS FIRST LEARNED ABOUT

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1989

1 SUCH INCREASED COSTS.

2 WHY SAN JOSE CITY OFFICIALS GAVE SECRET ASSURANCES
3 TO NORCAL THAT ADDITIONAL COSTS ARISING FROM THE USE OF
4 TEAMSTERS BY CWS FOR THE SORTING OF RECYCLABLE MATERIALS
5 WHICH WERE NOT INCLUDED IN THE ORIGINAL AGREEMENT WITH
6 NORCAL WOULD NONETHELESS BE PAID FOR BY THE CITY OF
7 SAN JOSE.

8 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
9 APPROVED A RATE HIKE IN MAY 2003 TO PAY FOR THOSE ADDITIONAL
10 COSTS.

11 WHETHER SAN JOSE CITY OFFICIALS MISLED THE PUBLIC
12 ABOUT THE TRUE REASONS FOR THIS 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 RELATED TO THE USE OF
16 TEAMSTERS FOR THE SORTING OF RECYCLABLE MATERIALS.

17 AND WHETHER ANYTHING WAS GIVEN OR PROMISED TO

18 SAN JOSE CITY OFFICIALS AS AN INDUCEMENT TO TAKE THESE
19 ACTIONS.

20 YOU ARE A SUBJECT OF THE GRAND JURY' S
21 INVESTIGATION. BY THAT I SIMPLY MEAN YOU' RE A PERSON WHOSE
22 CONDUCT IS WITHIN THE SCOPE OF THE GRAND JURY' S
23 INVESTIGATION.

24 YOU HAVE THE RIGHT TO REFUSE TO ANSWER ANY
25 QUESTION IF A TRUTHFUL ANSWER TO THE QUESTION WOULD TEND TO
26 INCRIMINATE YOU. ANYTHING THAT YOU DO SAY MAY BE USED
27 AGAINST YOU BY THE GRAND JURY OR IN A SUBSEQUENT LEGAL
28 PROCEEDING.

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1990

1 IF YOU HAVE RETAINED COUNSEL, THE GRAND JURY WILL
2 PERMIT YOU A REASONABLE OPPORTUNITY TO STEP OUTSIDE THE
3 GRAND JURY ROOM AND CONSULT WITH COUNSEL IF YOU SO DESIRE.

4 DO YOU UNDERSTAND WHAT I'VE JUST EXPLAINED TO YOU?

5 A. WELL, TO THE BEST OF MY ABILITY, NEVER HAVING ANY
6 EXPERIENCE WITH THIS -- IT' S A NEW PROCESS.

7 Q. DO YOU HAVE ANY QUESTIONS?

8 A. NOT AT THIS TIME.

9 Q. IF YOU DO, FEEL FREE TO ASK ME TO STOP AND JUST ASK

10 ME. WHEN WERE YOU FIRST ELECTED TO THE CITY COUNCIL?

11 A. I TOOK OFFICE JANUARY 1, 2003. I WAS ELECTED IN
12 MARCH.

13 Q. YOU' RE STILL IN YOUR FIRST TERM?

14 A. YES.

15 Q. NOW, DO YOU RECALL THAT IN MAY OF 2003 THE CITY
16 COUNCIL APPROVED A NINE PERCENT RATE HIKE IN THE GARBAGE
17 RATES?

18 A. YES.

19 Q. AND ACCORDING TO EXHIBIT 90, WHICH ARE THE MINUTES
20 FROM MAY 27, 2003, WHEN THE COUNCIL TOOK THIS MATTER UP, AND
21 THIS WOULD BE ITEM 7.1 ON THE MAY 27, 2003 AGENDA, ACCORDING
22 TO THE MINUTES YOU WERE ABSENT FOR THAT VOTE. DOES THAT
23 COMPORT WITH YOUR RECOLLECTION?

24 A. I DON' T RECALL. I HAVE TO RELY ON THE MINUTES.

25 Q. YOU HAVE NO REASON TO BELIEVE THE MINUTES ARE
26 INACCURATE?

27 A. NO.

28 Q. YOU DIDN' T ACTUALLY CAST A VOTE ON WHETHER OR NOT

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1991

1 TO RAISE THE RATE IN MAY 2003 SOME NINE PERCENT?

2 A. I DON' T RECALL. THE MINUTES SAY I DIDN' T; I SEE NO
Page 75

3 REASON TO DISBELIEVE THE MINUTES.

4 Q. EVEN THOUGH YOU DIDN'T CAST A VOTE ON THAT ISSUE, I
5 TAKE IT YOU WERE ONE OF THE -- AS A COUNCILMEMBER, YOU WERE
6 ONE OF THE PEOPLE WHO WOULD HAVE BEEN BRIEFED ON THAT ISSUE
7 IN ADVANCE?

8 A. I WOULD HAVE GOTTEN THE COUNCIL PACKET.

9 Q. AT THE TIME OF THE VOTE, WHAT DID YOU UNDERSTAND
10 THE PURPOSE OF THIS RATE HIKE WAS, THIS IS THE NINE PERCENT
11 HIKE IN MAY 2003.

12 A. IT WAS TO GIVE THE SALARY TO THE MRF WORKERS,
13 RECYCLE WORKERS AT THE CWS.

14 Q. OKAY. AND SO THIS IS IN MAY OF 2003. YOU
15 UNDERSTOOD THAT THE PURPOSE OF THE NINE PERCENT RATE HIKE
16 WAS TO GIVE ADDITIONAL MONEY TO THE MRF WORKERS?

17 A. TO THE BEST OF MY ABILITY TO RECALL, THE STATEMENT
18 I MADE BEFORE COVERS MY UNDERSTANDING OF IT.

19 Q. I'M ASKING ABOUT YOUR UNDERSTANDING IN 2003, NOT
20 WHAT YOU MAY HAVE LEARNED IN 2004 OR 2005 OR 2006.

21 A. I DON'T RECALL.

22 Q. SO YOU DON'T KNOW WHAT YOU UNDERSTOOD THE PURPOSE
23 TO BE?

24 A. NO.

25 Q. SO A MOMENT AGO WHEN YOU SAID THE PURPOSE WAS TO
26 GIVE ADDITIONAL MONEY TO MRF WORKERS, THAT WAS BASED ON
27 INFORMATION IN YOUR MIND AS OF TODAY?

28 A. YES.

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1992

1 Q. FOR THE PROCESS OF OUR INVESTIGATION, WE'RE TRYING
2 TO DETERMINE WHAT PEOPLE KNEW AND WHEN THEY KNEW IT BACK
3 WHEN CERTAIN EVENTS TOOK PLACE, SO PLEASE BEAR THAT IN MIND
4 WHEN TRYING TO ANSWER MY QUESTIONS, OKAY?

5 A. OKAY.

6 Q. SO AS FAR AS WHAT YOU KNEW ABOUT THE PURPOSE OF
7 RATE HIKE IN 2003, YOU JUST DON'T RECALL AT THIS TIME?

8 A. THAT'S CORRECT.

9 Q. OKAY. NOW, DO YOU RECALL THAT IN 2004 THE COUNCIL
10 CONSIDERED A RESOLUTION TO AMEND THE CITY'S AGREEMENT WITH
11 NORCAL TO PAY NORCAL AN ADDITIONAL \$11.25 MILLION?

12 A. I REMEMBER THAT.

13 Q. OKAY. LET ME SHOW YOU EXHIBIT 92, WHICH IS A
14 CERTIFIED COPY OF THE COUNSEL MINUTES FROM TUESDAY,
15 SEPTEMBER 21, 2004.

16 LET ME SHOW YOU ITEM 7.3, WHICH, AS YOU CAN SEE,
17 RELATES TO AMENDING THE NORCAL AGREEMENT. AND LET ME SHOW
18 YOU SOME MORE OF THE MINUTES WHICH REFLECT THAT YOU SPOKE IN
19 SUPPORT OF THE AMENDMENT. DO YOU SEE THAT?

20 A. YES, I DO.

21 Q. DO YOU RECALL SPEAKING IN SUPPORT OF THIS
22 AMENDMENT?

23 A. NO.

24 Q. DO YOU RECALL SUPPORTING THE AMENDMENT?

25 A. YES.

26 Q. CAN YOU TELL THE GRAND JURY WHY YOU SUPPORTED THE
27 AMENDMENT?

28 A. CONSIDERING THE CALENDAR TIME LINE YOU HAVE GIVEN

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1993

1 ME, I'M GOING TO SAY THIS WAS PROBABLY WHEN I THOUGHT IT WAS
2 TO INCREASE THE UNION WAGES TO THE MRF WORKERS, TEAMSTERS.

3 Q. THIS IS FOR THE PEOPLE WHO SORTED THE RECYCLABLES?

4 A. YES.

5 Q. SOMETIMES CALLED MRF WORKERS, M-R-F?

6 A. YES.

7 Q. AND WHAT PUBLIC PURPOSE DID YOU BELIEVE WAS SERVED
8 BY HAVING THE CITY PAY THIS \$11.25 MILLION TO NORCAL?

9 A. WHAT PUBLIC PURPOSE DID I THINK?

10 Q. YES.

11 A. I'M TRYING TO RECALL --

12 Q. TAKE YOUR TIME. NO RUSH.

13 A. I UNDERSTOOD THE DIRECTION OF THE COUNCIL BEFORE I

14 GOT ON THE COUNCIL WAS RETENTION OF WORKERS, COST SAVINGS TO
15 THE CITIZENS -- OH, LABOR PEACE. AND THAT WAS MY
16 UNDERSTANDING WHAT THAT WAS FOR.

17 Q. SO YOU THOUGHT THAT PAYING NORCAL \$11.25 MILLION
18 WOULD FURTHER THE CITY'S GOAL OF LABOR PEACE FOR THE WORKERS
19 WHO HAULED AWAY THE TRASH AND SORTED THE RECYCLABLES?

20 A. I THOUGHT THAT HAD BEEN THE DIRECTION OF THE
21 COUNCIL BEFORE I GOT ON, BEFORE I WAS ELECTED.

22 Q. I UNDERSTAND. BUT MY QUESTION IS WHAT RELATIONSHIP
23 DID YOU BELIEVE EXISTED BETWEEN PAYING NORCAL \$11.25 MILLION
24 AND THE COUNCIL'S GOAL OF LABOR PEACE; WHAT WAS THE
25 CONNECTION THERE?

26 A. I DON'T RECALL WHAT I THOUGHT AT THE TIME ON THAT
27 PARTICULAR QUESTION.

28 Q. SO YOU HAVE NO RECOLLECTION AT ALL ABOUT WHAT YOUR

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1994

1 THINKING WAS WHEN YOU SPOKE IN SUPPORT OF THIS AMENDMENT?

2 A. AS I SAID BEFORE, IT WAS MY UNDERSTANDING THAT THE
3 COUNCIL HAD A DIRECTION PRIOR TO MY BEING ON THE COUNCIL OF
4 THE THREE ITEMS I OUTLINED.

5 Q. YES. BUT AS I UNDERSTAND YOUR TESTIMONY, YOU'VE

6 TOLD US THAT YOU UNDERSTOOD THE COUNCIL HAD A DIRECTION AND
7 RECOGNIZED CERTAIN GOALS ON BEHALF OF THE CITY. SO YOU'VE
8 TOLD US ABOUT THAT, AND I THINK WE UNDERSTAND THAT POINT.
9 MY QUESTION IS A LITTLE BIT DIFFERENT. I'M ASKING YOU TO
10 EXPLAIN HOW PAYING THE \$11.25 MILLION TO NORCAL FURTHERED
11 ANY OF THOSE GOALS. THAT'S WHAT YOU HAVEN'T TOLD US. IF
12 YOU'RE ABLE TO.

13 A. I FELT THAT IT FULFILLED THE STATEMENT THAT THE
14 COUNCIL HAD MADE TO STAFF AS IT WAS OUTLINED TO ME WHEN I
15 GOT IN OFFICE AND THE ISSUE CAME BEFORE THE COUNCIL.

16 Q. WHAT STATEMENT WAS THAT?

17 A. THE THREE CRITERIA THAT THE COUNCIL HAD DIRECTED
18 WAS LABOR PEACE, RETENTION OF WORKERS, AND COST SAVINGS TO
19 THE CITIZENS.

20 Q. WELL, LET'S TAKE THEM ONE AT A TIME. WOULD YOU NOT
21 AGREE THAT PAYING AN ADDITIONAL \$11.25 MILLION TO NORCAL
22 WOULD NOT FURTHER THE GOAL OF COST SAVINGS? IT WOULD WORK
23 OPPOSITE OF THAT GOAL, RIGHT?

24 A. I DON'T REMEMBER THINKING ABOUT THAT QUESTION.

25 Q. WELL, HOW COULD PAYING AN ADDITIONAL \$11 MILLION TO
26 NORCAL PROMOTE THE COST SAVINGS TO THE RATEPAYERS? HOW WAS
27 THAT POSSIBLE?

28 A. WELL, IF THAT WAS THE DIRECTION GIVEN BY THE

1 COUNCIL, I FELT THAT WAS A DIRECTION THAT SHOULD HAVE BEEN
2 RESPECTED BY STAFF.

3 Q. WHAT DIRECTION, COST SAVINGS?

4 A. LABOR PEACE.

5 Q. OKAY. BUT I'M TRYING TO TAKE THESE ONE AT A TIME.
6 LET'S TALK ABOUT COST SAVINGS. DID YOU THINK PAYING \$11
7 MILLION PLUS TO NORCAL WOULD PROMOTE COST SAVINGS?

8 A. I DON'T REMEMBER THINKING OF THEM INDIVIDUALLY. I
9 REMEMBER THINKING OF THEM AS A COMPLETE PACKAGE OF
10 DIRECTIONS.

11 Q. AS YOU SIT HERE TODAY, CAN YOU THINK OF ANY WAY IN
12 WHICH PAYING \$11 MILLION TO NORCAL WOULD PROMOTE COST
13 SAVINGS TO THE RATEPAYERS?

14 A. I THINK SPEAKING FROM TODAY DOES NOT SPEAK TO MY
15 THINKING PROCESS BACK WHEN MY DECISION WAS MADE.

16 Q. I UNDERSTAND. NOW COULD YOU ANSWER MY QUESTION,
17 PLEASE.

18 A. I THINK I HAVE. WHEN I MADE MY DECISION, IT WAS
19 BASED ON INFORMATION I HAD AT THAT TIME.

20 Q. I UNDERSTAND, BUT I'M TRYING TO EXPLORE THAT. WHAT
21 INFORMATION DID YOU HAVE?

22 A. THE DIRECTION THE COUNCIL HAD GIVEN STAFF PRIOR TO
23 MY COMING ON COUNCIL.

24 Q. BY THAT DIRECTION, YOU MEANT FURTHERING THE GOAL OF

25 COST SAVINGS, LABOR PEACE, AND WORKER RETENTION, CORRECT?

26 A. YES.

27 Q. SO NOW I'M ASKING YOU, HOW WOULD PAYING AN
28 ADDITIONAL \$11.25 MILLION TO NORCAL FURTHER THE GOAL OF COST

SUE HERFURTH, CSR #9645

1996

1 SAVINGS? CAN YOU THINK OF ANY WAY THAT CAN FURTHER THE GOAL
2 OF COST SAVINGS?

3 A. I DON'T THINK IT WOULD BE FAIR TO ME -- ARE WE
4 SPEAKING ABOUT MY VOTE WHEN I MADE IT OR MY THOUGHT PROCESS
5 TODAY?

6 Q. LET'S START WITH TODAY. AS YOU SIT HERE TODAY, CAN
7 YOU THINK OF ANY WAY PAYING AN ADDITIONAL \$11.25 MILLION TO
8 NORCAL WOULD FURTHER THE GOAL OF COST SAVINGS TO RATEPAYERS?

9 A. SPEAKING FROM TODAY, I WAS TOLD AFTER, OR ACTUALLY,
10 I THINK I MAY HAVE BEEN TOLD BEFORE, THAT IF YOU LOOKED AT
11 THE BIDS OF THE RFP, IT WOULD HAVE STILL BEEN THE LOWEST
12 BID. THAT IS AS I RECALL IT. IT MAY NOT BE CORRECT.

13 Q. GRANTED IT MAY STILL HAVE BEEN THE LOWEST BID, BUT
14 IT WOULD HAVE BEEN \$11 MILLION MORE EXPENSIVE, WOULD IT NOT?

15 A. OBVIOUSLY.

16 Q. WELL, THEN CAN YOU TELL US HOW PAYING AN ADDITIONAL

17 \$11 MILLION ACHIEVES COST SAVINGS?

18 A. I'M NOT COMFORTABLE ANSWERING THAT QUESTION BECAUSE
19 WHEN I VOTED, I VOTED ON THE INFORMATION I HAD AT THE TIME.

20 Q. WELL, I UNDERSTAND YOU MAY HAVE SOME DISCOMFORT IN
21 TRYING TO ANSWER THE QUESTION, BUT YOU'RE REQUIRED TO ANSWER
22 IT.

23 A. I HAVE ANSWERED IT.

24 Q. YOU HAVE NOT.

25 A. YES, I HAVE.

26 Q. COUNCILMEMBER CHIRCO, IF I HAVE TO, I'LL BRING THE
27 JUDGE IN AND I'LL HAVE THE REPORTER READ THE QUESTION
28 BACK --

SUE HERFURTH, CSR #9645

1997

1 A. I RESPONDED TO THE QUESTION THAT OBVIOUSLY, IT WAS
2 NOT -- THE CONTRACT AS PRESENTED, WHICH WAS VOTED ON PRIOR
3 TO MY BEING IN OFFICE, OBVIOUSLY WAS GOING TO INCREASE THE
4 COST TO THE RATEPAYER. BUT WHEN I MADE THE VOTE, I VOTED
5 BASED ON WHAT I'VE OUTLINED HERE I ALREADY TOLD YOU. THE
6 \$11 MILLION OBVIOUSLY WOULD NOT, IT WOULD BE MORE MONEY TO
7 THE RATEPAYERS.

8 Q. OKAY. THANK YOU. SO HOW WOULD PAYING THIS \$11
9 MILLION TO NORCAL FURTHER THE GOAL OF LABOR PEACE?

10 A. AS I UNDERSTOOD IT, THERE WAS A LONGSHOREMEN
11 CONTRACT, AND THERE HAD BEEN TEAMSTER CONTRACTS PRIOR.

12 Q. YES?

13 A. AND LONGSHOREMEN MADE LESS THAN TEAMSTERS.

14 Q. OKAY.

15 A. NEXT QUESTION, OR WHAT PART DID I NOT ANSWER?

16 Q. YOU DIDN'T EXPLAIN HOW PAYING \$11 MILLION TO NORCAL
17 IN YOUR MIND WOULD PROMOTE LABOR PEACE. THAT'S THE
18 QUESTION.

19 A. BECAUSE IF THERE HAD BEEN -- I WAS NAIVE WHEN I GOT
20 ON THE COUNCIL, BECAUSE I DIDN'T UNDERSTAND HOW LABOR UNIONS
21 WORKED. AND APPARENTLY TEAMSTERS AND LONGSHOREMEN ARE TWO
22 DIFFERENT UNIONS.

23 Q. YES?

24 A. AND THE TEAMSTERS DIDN'T LIKE THE LONGSHOREMEN
25 HAVING THE CONTRACT.

26 Q. WHY DO YOU SAY THAT?

27 A. THAT'S WHAT I WAS TOLD.

28 Q. WHO TOLD YOU THAT?

SUE HERFURTH, CSR #9645

1998

1 A. I DON'T RECALL.

2 Q. WHEN WERE YOU TOLD THAT?

3 A. PROBABLY BEFORE I MADE MY VOTE.

4 Q. OKAY. LET ME SEE IF I CAN POSE SOME QUESTIONS TO
5 YOU IN A SOMEWHAT DIFFERENT WAY THAT MAYBE WILL ASSIST YOU
6 IN ANSWERING THE QUESTION.

7 AT THE TIME OF YOUR VOTE, DID YOU KNOW THAT CWS' S
8 DISPUTE WITH THE TEAMSTERS HAD BEEN SETTLED IN 2003, THE
9 YEAR BEFORE, WITH A NEW LONG-TERM COLLECTIVE BARGAINING
10 AGREEMENT? DID YOU KNOW THAT?

11 A. I CAN'T RECALL IF I KNEW IT OR NOT.

12 Q. I GUESS -- ARE YOU SUGGESTING TO US, AND ONLY YOU
13 KNOW THE ANSWER, BECAUSE NONE OF US WERE WITNESSES TO THIS.
14 I'M TRYING TO UNDERSTAND WHAT THE DIFFICULTY MAY BE HERE.

15 IN YOUR MIND, DID YOU BELIEVE THAT IF THE CITY
16 DIDN'T PAY THE \$11.25 MILLION TO NORCAL, THE WORKERS
17 WOULDN'T GET THE HIGHER WAGES AND BENEFITS? IS THAT WHAT
18 YOUR THINKING WAS?

19 A. TO THE BEST OF MY ABILITY TO RECALL, I WOULD SAY
20 THAT'S CORRECT.

21 Q. OKAY. SO YOU WERE UNDER THE IMPRESSION THAT WHAT
22 YOU WERE VOTING ON WAS WHETHER OR NOT THE WORKERS SHOULD GET
23 THIS EXTRA MONEY?

24 A. TO THE BEST OF MY ABILITY TO RECALL, YES.

25 Q. SO YOU DIDN'T KNOW AT THE TIME OF THE VOTE THAT THE
26 WORKERS HAD BEEN GETTING THE EXTRA MONEY SINCE DAY ONE OF
27 THE CONTRACT, JULY 1, 2002, WHEN THE SERVICES BEGAN?

28 A. AGAIN, I MEAN, THIS IS A LONG TIME AGO. TO THE

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1999

1 BEST OF MY ABILITY I WOULD SAY NO, I DIDN' T.

2 Q. YOU DIDN' T APPRECIATE AT THE TIME OF YOUR VOTE THAT
3 THE ISSUE WAS NOT WHETHER THE WORKERS GOT THE MONEY; THE
4 ISSUE WAS WHETHER THE CITY PAID FOR IT OR NORCAL PAID, OR
5 DID YOU UNDERSTAND THAT?

6 A. I DON' T RECALL.

7 Q. DID SOMEONE SUGGEST TO YOU AT THE TIME OF YOUR
8 VOTE, THIS FIRST VOTE IN SEPTEMBER OF 2004, THAT IF YOU
9 DIDN' T VOTE IN FAVOR OF THIS \$11 MILLION, THE WORKERS WOULD
10 NOT GET PAID THE HIGHER WAGES AND BENEFITS?

11 A. I DON' T RECALL. I WAS FAIRLY NEW TO THE COUNCIL.
12 IT WAS A HUGE AMOUNT OF LEARNING I WAS HAVING TO ENGAGE IN.

13 Q. DO YOU KNOW SOMEONE NAMED JOHN NICOLETTI?

14 A. YES.

15 Q. WHO IS JOHN NICOLETTI?

16 A. HE' S SOMEBODY THAT WORKS FOR NORCAL.

17 Q. HOW DO YOU KNOW MR. NICOLETTI?

18 A. I HAD MET HIM, I THINK, WHEN I WAS CAMPAIGNING. I
19 KNOW I DEFINITELY MET HIM WHEN I GOT INTO OFFICE.

20 Q. AND DID YOU EVER SPEAK TO MR. NICOLETTI ABOUT THE

21 PROPOSED AMENDMENT?

22 A. I REMEMBER SPEAKING TO NORCAL; I REMEMBER SOMEBODY
23 NAMED DAN AND BARBARA ZEITMAN, AND JOHN MAY HAVE BEEN THERE,
24 TOO. I KNOW I HAD AN APPOINTMENT IN MY OFFICE; THEY WERE ON
25 THE COUNCIL FLOOR, THE NORCAL MEETING WITH THE COUNCIL
26 PEOPLE.

27 Q. WHAT DID THEY TELL YOU ABOUT THIS PROPOSED
28 AMENDMENT?

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2000

1 A. THAT THIS WAS SOMETHING THAT THE CITY NEEDED TO
2 MAKE WHOLE, THAT THEY HAD TO HONOR, BECAUSE IT WAS GOING
3 FROM LONGSHOREMEN TO TEAMSTERS.

4 Q. WHY WAS THAT THE CITY'S PROBLEM?

5 A. TO THE BEST OF MY ABILITY TO RECALL, I THOUGHT THE
6 WORKERS WERE NOT GETTING THEIR MONEY AND THEY WERE OPERATING
7 UNDER THE LONGSHOREMEN CONTRACT.

8 Q. SO YOU DON'T REMEMBER KNOWING THAT THE TEAMSTERS
9 HAD BEEN RECOGNIZED YEARS PREVIOUSLY BY THE SUBCONTRACTOR
10 AND THAT THE YEAR BEFORE, IN 2003, THE SUBCONTRACTOR HAD
11 SIGNED A NEW LONG-TERM COLLECTIVE BARGAINING AGREEMENT WITH
12 THE TEAMSTERS?

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

14 Q. SO YOUR IMPRESSION WAS THIS VOTE WAS NECESSARY SO
15 THAT THESE WORKERS WHO DID A HARD JOB WOULD GET ADDITIONAL
16 MONEY?

17 A. TO THE BEST OF MY ABILITY TO RECALL, YES.

18 Q. CAN YOU SHED ANY LIGHT ON WHAT IT IS THAT GAVE YOU
19 THAT IMPRESSION?

20 A. JUST THAT, THE CONTRACT HAD BEEN GIVEN TO THE
21 LONGSHOREMEN UNION AND THAT THEIR WAGES WERE LESS THAN THE
22 TEAMSTERS.

23 Q. RIGHT. BUT WHO GAVE YOU THAT IMPRESSION? THAT'S
24 WHAT I'M TRYING TO FIND OUT.

25 A. I REMEMBER MEETING WITH JOE GUERRA. I HAD LUNCH
26 WITH HIM.

27 Q. WHEN WAS THAT?

28 A. IT WAS BEFORE THE VOTE, AND I ASKED HIM ABOUT IT.

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2001

1 Q. WHAT DID HE TELL YOU?

2 A. THAT THE LONGSHOREMEN HAD BEEN THE CONTRACTOR, THE
3 UNION OF CHOICE BY CWS.

4 Q. YES?

5 A. AND THAT'S WHAT I RECALL.

6 Q. WELL, A MOMENT AGO YOU SAID IN YOUR DEALINGS WITH
7 NORCAL THAT THE CITY HAD TO HONOR SOMETHING; IS THAT RIGHT?

8 A. WHICH WAS THE LABOR PEACE, WHICH IS WHY I THOUGHT
9 THERE WAS THE DISAGREEMENT BETWEEN THE TWO UNIONS.

10 Q. WHAT WAS YOUR THINKING ABOUT WHY THIS WAS THE
11 CITY'S RESPONSIBILITY FINANCIALLY AS OPPOSED TO THE
12 CONTRACTOR'S RESPONSIBILITY?

13 A. IT SOUNDED LIKE THERE HAD BEEN -- DIDN'T SOUND LIKE
14 THE DIRECTION OF THE COUNCIL HAD BEEN FOLLOWED TO ME, WHICH
15 WAS THE THREE ITEMS OF LABOR PEACE, WORKER RETENTION, AND
16 COST SAVINGS.

17 Q. LOOK. THE CITY HAS CONTRACTS WITH LOTS OF VENDORS,
18 RIGHT?

19 A. YES.

20 Q. IF A VENDOR HAS A LABOR DISPUTE WITH ITS UNION AND
21 NEGOTIATES A NEW LABOR AGREEMENT, DO THEY GET TO GO BEFORE
22 THE CITY COUNCIL AND GET ADDITIONAL MONEY FOR A CONTRACT
23 THEY ALREADY SIGNED?

24 A. I KNOW THAT WAS A HUGE ISSUE WITH THE COUNCIL ON
25 THE, QUOTE, SECOND BITE OF THE APPLE. MY PARTICULAR ISSUE
26 WITH THAT THE COUNCIL HAD DIRECTED ONE THING AND ANOTHER
27 THING HAD OCCURRED IN THE CONTRACT.

28 Q. SO WHY IS THAT THE CITY'S PROBLEM? THAT'S WHAT I'M

1 TRYING TO UNDERSTAND, COUNCIL MEMBER CHIRCO. WHY IS IT THE
2 CITY SHOULD BEAR THE FINANCIAL RESPONSIBILITY OF FIXING A
3 PROBLEM THAT THE CONTRACTOR WAS REQUIRED TO FIX UNDER THE
4 AGREEMENT?

5 A. UH -- I FELT THE CITY WAS REQUIRED TO FIX IT
6 BECAUSE DIRECTION BY COUNCIL HAD NOT BEEN FOLLOWED.

7 Q. FOLLOWED BY WHO?

8 A. STAFF.

9 Q. IN WHAT WAY?

10 A. THERE HAD BEEN TEAMSTERS THERE BEFORE, AND IT WOULD
11 CREATE LABOR -- LACK OF PEACE -- THAT DIDN'T ADHERE TO
12 COUNCIL DIRECTION.

13 Q. WELL, DIDN'T THE CONTRACTOR, NORCAL, HAVE TO
14 GUARANTEE LABOR PEACE IN ITS CONTRACT WITH THE CITY?

15 A. I --

16 Q. ISN'T THAT A STANDARD CLAUSE IN CITY CONTRACTS?

17 A. I KNOW IT'S A STANDARD CLAUSE, BUT AS FAR AS CWS
18 AND NORCAL, I'M NOT FAMILIAR WITH THE CONTRACT AS IT WAS
19 WRITTEN. WHEN IT CAME BACK WHEN I WAS IN OFFICE, IT
20 APPEARED THE STAFF HAD NOT FOLLOWED ALL OF THE COUNCIL
21 DIRECTION.

22 Q. AND THEY HADN'T FOLLOWED COUNCIL DIRECTION BECAUSE
23 WHY?

24 A. UH -- BECAUSE THE CONTRACT HAD BEEN AWARDED TO A
25 PROVIDER THAT USED LONGSHOREMEN VERSUS TEAMSTERS.

26 Q. AND WHY IS IT YOU FELT THE TEAMSTERS SHOULD BE THE
27 UNION USED BY THE SUBCONTRACTOR?

28 A. I DIDN'T NECESSARILY BELIEVE IN ONE UNION OR

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2003

1 ANOTHER. BUT IF THE COUNCIL DIRECTION WAS LABOR PEACE AND
2 THIS WAS GOING TO CREATE NO PEACE, THEN I FELT THE STAFF
3 SHOULD HAVE FOLLOWED COUNCIL DIRECTION.

4 Q. WHY WOULD IT BE MORE PEACEFUL TO HAVE TEAMSTERS IN
5 PLACE RATHER THAN LONGSHOREMEN?

6 A. I HAVE NO IDEA.

7 Q. DID YOU EVER LEARN ABOUT ANY ASSURANCES OR
8 COMMITMENTS THAT THE MAYOR OR MAYOR'S OFFICE MAY HAVE MADE
9 TO NORCAL AT THE TIME THE ORIGINAL CONTRACT WAS BEING
10 AWARDED?

11 A. THE ORIGINAL, BACK BEFORE I WAS IN OFFICE?

12 Q. YES.

13 A. NO. IF YOU'RE TALKING ABOUT AFTER THE VOTE --

14 Q. YEAH. AT ANY TIME, HAVE YOU EVER HEARD IT?

15 A. I'VE HEARD IT IN THE PAPER. I'VE HEARD IT
16 EVERYWHERE.

- 17 Q. THE FIRST TIME YOU LEARNED THAT WAS IN A NEWSPAPER?
- 18 A. YES.
- 19 Q. DO YOU RECALL WHEN IT WAS YOU LEARNED ABOUT IT?
- 20 A. NO.
- 21 Q. IN YOUR DISCUSSION WITH NORCAL REPRESENTATIVES YOU
- 22 IDENTIFIED BARBARA ZEITMAN-OLSEN AS ONE PERSON?
- 23 A. YES.
- 24 Q. SOMEBODY NAMED DAN?
- 25 A. YES.
- 26 Q. POSSIBLY JOHN NICOLETTI ?
- 27 A. POSSIBLY.
- 28 Q. DID THEY SAY ANYTHING ABOUT THE CITY NEEDING TO

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2004

- 1 MAKE NORCAL WHOLE?
- 2 A. I DON'T RECALL.
- 3 Q. DID THEY SAY ANYTHING ABOUT THE CITY HAVING
- 4 REQUIRED THEIR SUBCONTRACTOR TO SWITCH UNIONS FROM
- 5 LONGSHOREMEN TO TEAMSTERS?
- 6 A. I DON'T RECALL.
- 7 Q. I'M TRYING TO PROBE YOUR THINKING, IF YOU WILL BEAR
- 8 WITH ME A MOMENT. IF THE CITY CONTRACTS WITH A COMPANY TO

9 PROVIDE SHUTTLE BUS SERVICE TO AND FROM THE AIRPORT AND THE
10 CONTRACTOR COMES BACK TWO YEARS LATER AND SAYS, MY BUSES ARE
11 OLD, I NEED NEW BUSES, IS THAT THE CITY'S RESPONSIBILITY TO
12 PAY FOR NEW BUSES FOR THE CONTRACTOR?

13 A. DEPENDS UPON HOW THE CONTRACT IS WRITTEN, I GUESS.
14 I DON'T KNOW. DEPENDS ON -- I'M A LAYPERSON, I'M NOT AN
15 ATTORNEY, SO I WOULD GUESS IT'S HOW THE CONTRACT IS WRITTEN.

16 Q. AT THE TIME OF THIS VOTE, DIDN'T THE CITY ATTORNEY
17 EXPLAIN TO THE COUNCIL THAT THE COUNCIL WAS UNDER NO
18 OBLIGATION TO VOTE IN FAVOR OF THIS \$11 MILLION PAYMENT?

19 A. I HAVE READ THAT. I CAN'T SAY I RECALL IT FROM
20 THAT PARTICULAR MEETING, BUT I HAVE READ THAT SINCE THAT
21 VOTE, BUT IT SOUNDS LIKE SOMETHING THAT WOULD HAVE BEEN
22 SAID.

23 Q. THE CITY WAS UNDER NO OBLIGATION TO DO THAT. WHY
24 DID YOU SPEAK IN SUPPORT OF DOING THAT?

25 A. BECAUSE I DIDN'T FEEL STAFF HAD FOLLOWED THE
26 ORIGINAL COUNCIL DIRECTION.

27 Q. I'LL TRY THIS ONE MORE TIME, THEN I'LL MOVE ON.
28 THEY DIDN'T FOLLOW COUNCIL DIRECTIONS IN WHAT WAY?

SUE HERFURTH, CSR #9645

2005

1 A. THREE DIRECTIONS, AS I UNDERSTOOD IT, TO REPEAT
Page 93

2 MYSELF.

3 Q. NO, NO. YOU'VE TOLD US WHAT THE DIRECTION WAS.
4 I'M TRYING TO UNDERSTAND IN WHAT PARTICULAR WAY THEY FELL
5 SHORT IN FOLLOWING THAT DIRECTION.

6 A. LABOR PEACE WAS MY THINKING.

7 Q. WHY WAS IT CITY STAFF -- IN WHAT WAY DID CITY STAFF
8 NOT FOLLOW DIRECTION REGARDING THE CITY'S LABOR PEACE? ARE
9 YOU SUGGESTING THEY PICKED THE WRONG VENDOR OR THAT THE
10 RESPONSIBILITY, IT WAS THE RESPONSIBILITY OF STAFF TO ENSURE
11 LABOR PEACE, OR WHAT ARE YOU TRYING TO TELL US?

12 A. WHEN THE VOTE CAME TO ME WHEN I WAS ON THE COUNCIL,
13 I DON'T KNOW IF, HOW IT WAS RECOMMENDED, BUT AS I UNDERSTOOD
14 IT, AND I DID ASK THE QUESTION -- BUT I DIDN'T GET A CLEAR
15 ANSWER, AT LEAST CLEAR ENOUGH FOR ME TO UNDERSTAND -- WHY
16 DID YOU RECOMMEND A COMPANY THAT WAS USING LONGSHOREMEN IF
17 THE TEAMSTERS HAD THE ORIGINAL CONTRACT AND THE DIRECTION
18 WAS FOR LABOR PEACE.

19 Q. OKAY. THAT SOUNDS LIKE A REASONABLE QUESTION. WHO
20 DID YOU ASK THAT?

21 A. DEL.

22 Q. DEL BORGSDORF, THE CITY MANAGER?

23 A. YES.

24 Q. THAT WAS AT THE COUNCIL MEETING?

25 A. NO, IT WAS IN ONE OF MY STANDARD MEETINGS WITH DEL.

26 Q. WHAT ANSWER DID YOU GET?

27 A. NOTHING I UNDERSTOOD.

28 Q. DO YOU RECALL WHAT HE SAID?

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2006

1 A. NO.

2 Q. OKAY. LET'S TAKE A LOOK AT EXHIBIT 133. THIS IS A
3 PAGE FROM THE SAN JOSE MERCURY NEWS EDITORIAL PAGE FROM
4 THURSDAY OCTOBER 14, 2004. ARE YOU A READER OF THE MERCURY
5 NEWS?

6 A. MOST OF THE TIME.

7 Q. DO YOU READ THE EDITORIAL PAGE?

8 A. MOST OF THE TIME.

9 Q. DO YOU RECALL READING THIS EDITORIAL BACK IN 2004
10 AFTER THE FIRST VOTE ON THE AMENDMENT?

11 A. I DON'T RECALL.

12 Q. THERE IS A PARAGRAPH THAT MAKES REFERENCE TO THAT
13 SEPTEMBER 16 MEMO FROM MAYOR GONZALES. DO YOU RECALL THAT
14 MEMO IN CONNECTION WITH THIS VOTE?

15 A. NO, I DO NOT.

16 Q. I'LL SHOW THAT TO YOU IN A MOMENT -- ACTUALLY, LET
17 ME SHOW IT TO YOU NOW. WE HAVE THE SEPTEMBER 16 MEMO UP ON
18 THE SCREEN. DID YOU RECEIVE A COPY OF THIS MEMO AT THE TIME
19 OF YOUR VOTE?

20 A. LOGIC SAYS I DID, BUT I DON'T RECALL.

21 Q. LET'S GO BACK TO THE EDITORIAL IN THE MERCURY. IT
22 SAID:

23 THE SEPTEMBER 16 MEMO FROM THE MAYOR
24 ACKNOWLEDGED SHORTLY BEFORE THE CITY COUNCIL VOTED
25 ON POTENTIAL HAULERS IN 2000, IT WAS BROUGHT TO
26 THE MAYOR'S ATTENTION THAT THERE WAS A POTENTIAL
27 UNION PROBLEM. IT ALSO SAID AFTER COUNCIL
28 APPROVAL, THE MAYOR'S OFFICE LEARNED THAT THE

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2007

1 WORKERS WOULD BE EXPECTED TO CHANGE UNIONS.

2 DO YOU SEE THAT PARAGRAPH?

3 A. YES.

4 Q. IT GOES ON:

5 BUT THE CURRENT AND FORMER NORCAL EXECUTIVE
6 SAID THEY HAD THE PLEDGE OF SUPPORT FROM THE MAYOR
7 BEFORE THE COUNCIL VOTED TO AWARD THEM THE
8 CONTRACT IN 2000.

9 NOW, LOOKING AT THAT ARTICLE, DOES THAT REFRESH
10 YOUR RECOLLECTION ABOUT HAVING READ THIS ARTICLE AT THE TIME
11 IT APPEARED IN THE PAPER?

12 A. I DON'T RECALL.

13 Q. LOOKING AT THAT STATEMENT IN THE ARTICLE, DOES THAT
14 REFRESH YOUR RECOLLECTION ABOUT WHAT THE NORCAL PEOPLE MIGHT
15 HAVE SAID TO YOU ABOUT THIS AMENDMENT AND THE BACKGROUND OF
16 HOW IT GOT THERE?

17 A. I DON'T RECALL.

18 Q. DO YOU HAVE ANY REASON TO BELIEVE THAT YOU DID NOT
19 READ THIS EDITORIAL WHEN IT CAME OUT ON THURSDAY OCTOBER 14,
20 2004?

21 A. THERE IS NO WAY I CAN RECALL THAT. I CAN'T SAY I
22 READ THE PAPERS EVERY MORNING. I DON'T RECALL IF I READ
23 THIS PARTICULAR ONE.

24 Q. WOULD YOU SAY THAT, AT LEAST AS FAR AS THE SAN JOSE
25 MERCURY NEWS WAS CONCERNED, THE COUNCIL VOTE ON THIS
26 ADDITIONAL \$11.25 MILLION PAYMENT TO NORCAL WAS THE SUBJECT
27 OF SOME CONTROVERSY AND SOME DISCUSSION IN THE MEDIA?

28 A. YES.

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2008

1 Q. YOU DO RECALL THAT AT THE TIME, RIGHT?

2 A. YEAH. I WANT TO SAY IT WAS MULTIPLE MERCURIES.

3 Q. DOESN'T THAT SUGGEST TO YOU THAT AS YOU WERE
4 FLIPPING THROUGH THE PAPER, YOU SAW THIS EDITORIAL?

5 A. I DON'T RECALL. OBVIOUSLY, I READ SOME. DID I
6 READ THIS PARTICULAR ONE? I DON'T RECALL.

7 Q. THERE WAS A SECOND VOTE ON THE AMENDMENT IN
8 DECEMBER 2004. DO YOU RECALL THAT?

9 A. THAT PARTICULAR VOTE, NO.

10 Q. I'LL SHOW YOU EXHIBIT 100, WHICH IS THE TUESDAY,
11 DECEMBER 14, 2004 MINUTES. LET ME DIRECT YOUR ATTENTION TO
12 ITEM 7.2 IN THE MINUTES, WHICH ARE THE SECOND APPROVAL OF
13 THE AMENDMENT TO THE NORCAL AGREEMENT. LET ME DIRECT YOUR
14 ATTENTION FURTHER TO THE ACTION ON THE MINUTES. THE ACTION
15 INDICATES SEVEN VOTES IN FAVOR OF THE RESOLUTION, THREE NOS,
16 AND ONE ABSENT. THAT'S THE FULL COUNCIL OF 11 PEOPLE,
17 RIGHT?

18 A. YES.

19 Q. SINCE YOUR NAME IS NOT LISTED UNDER THE NOS OR THE
20 ABSENT, I ASSUME YOU VOTED FOR THIS A SECOND TIME, RIGHT?

21 A. I WOULD RELY ON THE MINUTES TO BE ACCURATE, YES.

22 Q. I THINK YOU TOLD US YOU DID SEE SOME ITEMS IN THE
23 NEWSPAPER QUESTIONING THE WISDOM OF THIS \$11.25 MILLION
24 PAYMENT TO NORCAL, RIGHT?

25 A. LOGIC WOULD INDICATE, BUT AS TO PARTICULAR
26 ARTICLES, I'M JUST GOING TO SAY IT'S ILLOGICAL TO THINK I
27 WOULD NOT HAVE SEEN SOME OF THEM.

28 Q. WHAT DID YOU THINK ABOUT WHAT THE NEWSPAPER WAS

1 SAYING IN WHATEVER ARTICLES YOU MAY HAVE READ ABOUT THE
2 SUBJECT?

3 A. I DON'T RECALL WHAT I WAS THINKING ABOUT WHAT THE
4 MERCURY HAD TO SAY ABOUT THIS PARTICULAR ISSUE. OBVIOUSLY,
5 IT WAS AN ISSUE OF -- NOT EVERYONE AGREED ON IT. EVEN FROM
6 THE VOTE, YOU CAN SEE THAT THEY DIDN'T AGREE ON IT.

7 Q. RIGHT. DO YOU RECALL THAT ANOTHER CONTRACTOR WHO
8 WASN'T AWARDED THE CONTRACT COMPLAINED THAT GIVING AN
9 ADDITIONAL PAYMENT TO A SUCCESSFUL BIDDER WAS UNFAIR TO ALL
10 THE OTHER BIDDERS? DO YOU RECALL THAT ARGUMENT BEING MADE?

11 A. I DON'T RECALL, BUT IT DOESN'T SOUND ILLOGICAL.

12 Q. APPARENTLY, YOU WEREN'T PERSUADED BY THAT ISSUE?

13 A. SINCE I VOTED IN FAVOR OF IT, I WOULD HAVE TO SAY
14 THAT I WOULD HAVE HEARD ALL THE TESTIMONY IN COUNCIL AND MY
15 VOTE INDICATES MY POSITION.

16 Q. LET ME SHOW YOU EXHIBIT 93, WHICH IS A SEPTEMBER
17 20, 2004 MEMO THAT WAS SUBMITTED TO THE COUNCIL BY
18 COUNCILMEMBERS LEZOTTE AND REED IN CONNECTION WITH THE FIRST
19 VOTE ON SEPTEMBER 21, 2004. DO YOU RECALL RECEIVING A COPY
20 OF THIS MEMO?

21 A. I DON'T RECALL THAT PARTICULAR MEMO.

22 Q. DO YOU HAVE ANY REASON TO BELIEVE YOU DIDN'T
23 RECEIVE IT?

24 A. NO, I HAVE NO REASON TO BELIEVE I DIDN'T RECEIVE
25 IT.

26 Q. YOU' LL NOTICE THAT THE FIRST POINT ON THIS MEMO IS
27 THAT THE AMENDMENT APPEARS TO BE A GIFT OF PUBLIC FUNDS. DO
28 YOU SEE THAT?

SUE HERFURTH, CSR #9645

2010

1 A. YES.

2 Q. I TAKE IT YOU WERE NOT PERSUADED BY THAT ARGUMENT?

3 A. NO, I STOOD ON MY THINKING PRIOR THAT STAFF HAD NOT
4 FOLLOWED COUNCIL DIRECTION, AND AS SUCH --

5 Q. JUST BEAR WITH ME.

6 A. OKAY.

7 Q. WHEN YOU SAY STAFF HAD NOT FOLLOWED COUNCIL
8 DIRECTION, YOU' RE TALKING ABOUT IN THE AWARDING OF THE
9 ORIGINAL CONTRACT TO NORCAL?

10 A. YES.

11 Q. AND SO YOUR THINKING WAS THEY PICKED A BAD
12 CONTRACTOR, THE CONTRACTOR HAD THIS LABOR ISSUE LOOMING OUT
13 THERE THAT WAS INCONSISTENT WITH LABOR PEACE; IS THAT WHAT
14 YOU' RE SAYING?

15 A. I DON'T KNOW I WOULD SAY IT WAS A BAD CONTRACTOR OR

16 DID THE STAFF NOT PRESENT A GOOD CONTRACT.

17 Q. HOW DID YOU THINK THE CONTRACT COULD HAVE BEEN
18 BETTER?

19 A. THAT STAFF SHOULD HAVE BROUGHT TO THE COUNCIL'S
20 ATTENTION THAT IT WAS LONGSHOREMEN AND NOT TEAMSTERS.

21 Q. WHY DID YOU THINK THAT WASN'T BROUGHT TO THE
22 COUNCIL'S ATTENTION?

23 A. THAT IF THE DIRECTION WAS LABOR PEACE AND STAFF
24 BROUGHT FORWARD A CONTRACT FOR SOMEONE THAT HAD
25 LONGSHOREMEN, THAT'S WHY I THOUGHT IT HAD NOT BEEN FOLLOWED
26 THROUGH ON, COUNCIL DIRECTION.

27 Q. YOU THOUGHT STAFF SHOULD HAVE BROUGHT FORWARD A
28 CONTRACT THAT INCLUDED A VENDOR THAT USED TEAMSTERS INSTEAD

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2011

1 OF LONGSHOREMEN?

2 A. I DIDN'T CARE IF IT WAS TEAMSTERS OR LONGSHOREMEN.
3 BUT IF THE DIRECTION BY THE COUNCIL WAS LABOR PEACE AND IT
4 WAS GOING TO CREATE AN ENVIRONMENT THAT WASN'T LABOR
5 PEACE --

6 Q. BECAUSE THE SUBCONTRACTOR WAS PROPOSING TO
7 RECOGNIZE A DIFFERENT UNION; IS THAT THE PROBLEM?

8 A. YES, AS I UNDERSTOOD IT AT THE TIME.

9 Q. WHY WOULD RECOGNIZING THE OTHER UNION BE NOT
10 PEACEFUL?

11 A. TEAMSTERS HAD THE JOBS, AND LONGSHOREMEN GOT IT,
12 AND THAT WASN'T MAKING FOR LABOR PEACE.

13 Q. IT WAS A DIFFERENT VENDOR.

14 A. I, I DON'T HAVE THE EXPERTISE TO ADDRESS THAT. I
15 WAS RELYING ON THE INFORMATION I HAD AT THE TIME, WHICH WAS
16 WHAT WAS THE DIRECTION GIVEN TO COUNCIL, BY COUNCIL TO STAFF
17 IN THE AWARDING OF THE ORIGINAL CONTRACT.

18 Q. RIGHT. BUT WAS IT YOUR THINKING THAT IF SOMEONE IS
19 REPRESENTED BY THE TEAMSTERS AND THEY NOW LOSE THEIR JOB AND
20 GET HIRED BY ANOTHER COMPANY, THEY HAVE THE RIGHT TO BE
21 RECOGNIZED BY THE TEAMSTERS, EVEN THOUGH THE OTHER COMPANY
22 RECOGNIZED THEM DIFFERENTLY?

23 A. I THINK WHATEVER LABOR DOES IS THEIR RIGHT. I WAS
24 RELYING ON THE COUNCIL DIRECTION AS GIVEN TO STAFF, WHICH
25 ARE THE THREE ITEMS I REFERRED TO.

26 Q. RIGHT. BUT YOU UNDERSTOOD THAT THE CONTRACT WAS
27 APPROVED BY THE COUNCIL BACK IN 2000, 2001, RIGHT?

28 A. I UNDERSTOOD THAT THE CONTRACT WAS APPROVED OR WAS

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2012

1 PRESENTED BY THE STAFF. WHEN THIS ISSUE CAME UP, I THOUGHT
2 IT WAS, MY UNDERSTANDING WAS IT WAS THAT IT WAS A
3 DISAGREEMENT BETWEEN TEAMSTERS AND LONGSHOREMEN.

4 Q. RIGHT. DID YOU THINK THAT ISSUE WAS NOT KNOWN TO
5 THE COUNCIL WHEN THEY APPROVED THE ORIGINAL CONTRACT?

6 A. I DID NOT KNOW --

7 Q. I'M TRYING TO UNDERSTAND WHY YOU'RE FIXING THE
8 BLAME ON STAFF AS OPPOSED TO THE COUNCIL OR THE VENDOR HERE.
9 CAN YOU SHARE ANY INSIGHT WITH US?

10 A. JUST, I WAS TOLD THE COUNCIL DIRECTION WAS LABOR
11 PEACE, YOU KNOW.

12 Q. RIGHT. YOU'VE TOLD US THAT.

13 A. SEVERAL TIMES. AND IF THE CONTRACT WAS BROUGHT
14 FORWARD -- I'M FIXING ON STAFF BECAUSE -- I'M NOT SAYING --
15 THIS IS TO MY UNDERSTANDING. WHY DID THEY RECOMMEND THE
16 CONTRACT THAT HAD LONGSHOREMEN AS THE MATERIAL SORTERS WHEN
17 THE CONTRACT HAD PREVIOUSLY HAD TEAMSTERS.

18 Q. RIGHT. YOU UNDERSTOOD THAT WAS A DIFFERENT
19 EMPLOYER. THE TEAMSTERS WERE WORKING FOR WASTE MANAGEMENT,
20 AND THIS WAS A DIFFERENT COMPANY.

21 A. YES.

22 Q. MY QUESTION IS DID YOU THINK THAT THE COUNCIL
23 WASN'T AWARE OF THIS UNION ISSUE WHEN THEY VOTED IN THE
24 ORIGINAL CONTRACT? STAFF HAD SOMEHOW CONCEALED THIS FROM
25 THE COUNCIL?

26 A. I DON'T RECALL.

27 Q. I MEAN, WHY ISN'T THE COUNCIL ANY LESS TO BLAME
28 THAN STAFF IF THEY VOTED FOR THE ORIGINAL CONTRACT, GIVEN

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2013

1 THE DIFFERENCE IN UNIONS, WHY IS THE STAFF TO BLAME HERE?

2 A. UH -- I'M GOING BY, AS I UNDERSTOOD IT, THAT THE
3 STAFF RECOMMENDATION WAS FOR THIS PARTICULAR CONTRACT.

4 Q. RIGHT. AND DO YOU HAVE ANY REASON TO BELIEVE THAT
5 THE RECOMMENDATION WOULD NOT DISCLOSE TO THE COUNCIL AT THE
6 TIME OF THE VOTE THAT THEY WERE GOING TO USE LONGSHOREMEN
7 INSTEAD OF TEAMSTERS?

8 A. I HAVE NO KNOWLEDGE OF THAT.

9 Q. I'M TRYING TO UNDERSTAND WHY YOU'RE BLAMING STAFF,
10 IF COUNCIL KNEW WE'RE RECOMMENDING A VENDOR THAT'S USING
11 LONGSHOREMEN THAT'S GOING TO REPLACE TEAMSTERS, AND THE
12 COUNCIL VOTED FOR THAT IN 2000, WHY ISN'T IT THE COUNCIL'S
13 FAULT? WHY IS IT STAFF'S FAULT?

14 A. I WAS NOT ON COUNCIL AT THE TIME. I WAS GOING ON
15 INFORMATION --

16 Q. WHAT INFORMATION WERE YOU GOING ON? WHO PROVIDED
17 YOU THIS INFORMATION? WHAT WAS THE SOURCE OF THE
18 INFORMATION?

19 A. I DON'T RECALL.

20 Q. CAN YOU THINK OF ANY OTHER OCCASION DURING YOUR
21 TIME ON THE COUNCIL WHEN A VENDOR ENTERED INTO AN AGREEMENT
22 AND THEN THE COUNCIL DECIDED TO PAY THEM AN ADDITIONAL \$11
23 MILLION BEYOND WHAT THE ORIGINAL CONTRACT CALLED FOR?

24 A. I KNOW AFTER THIS PARTICULAR ISSUE CAME TO COUNCIL
25 THERE WAS A LOT OF DIALOGUE ON THE COUNCIL ABOUT, THERE WAS
26 ANOTHER VENDOR THAT CAME IN, CERTAINLY WASN'T \$11 MILLION,
27 BUT IT WAS ANOTHER ONE, BECAUSE I REMEMBER LOTS OF
28 CONVERSATION ABOUT A SECOND BITE OF THE APPLE.

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2014

1 Q. RIGHT.

2 A. BUT AT THE TIME THIS CAME TO COUNCIL, MY THINKING
3 WAS AS TO THE BEST OF MY ABILITY I DESCRIBED TO YOU.

4 Q. JUST BEAR WITH ME FOR A MINUTE. LOOKING BACK ON
5 THIS VOTE IN 2004, DO YOU THINK MAYBE YOU DIDN'T FULLY
6 UNDERSTAND THE ISSUES WHEN YOU CAST YOUR VOTE?

7 A. BASED ON THE INFORMATION THAT I KNOW NOW, YES.

8 Q. LET ME SEE IF THE JURORS HAVE ANY OTHER QUESTIONS
9 FOR YOU.

10 ALL RIGHT. THANK YOU VERY MUCH. BEFORE YOU GO,
11 WE'RE NOT EXCUSING WITNESSES UNTIL THE INVESTIGATION IS

12 COMPLETED, WHICH MEANS YOU MAY BE ASKED TO COME BACK AND
13 ANSWER ADDITIONAL QUESTIONS. I DON'T THINK THAT'S THE CASE,
14 BUT IT'S A POSSIBILITY.

15 ALSO, THE PROCEEDINGS ARE CONFIDENTIAL AND SECRET
16 AND THE FOREPERSON WILL READ AN ADMONITION TO YOU, SO PLEASE
17 LISTEN CAREFULLY.

18 THE FOREPERSON: THIS IS A CONFIDENTIALITY
19 ADMONITION.

20 YOU ARE ADMONISHED NOT TO REVEAL TO ANY PERSON,
21 EXCEPT AS DIRECTED BY THE COURT, WHAT QUESTIONS WERE ASKED
22 OR WHAT RESPONSES WERE GIVEN OR ANY OTHER MATTERS CONCERNING
23 THE NATURE OR SUBJECT OF THE GRAND JURY'S INVESTIGATION
24 WHICH YOU LEARNED DURING YOUR APPEARANCE BEFORE THE GRAND
25 JURY, UNLESS AND UNTIL SUCH TIME AS THE TRANSCRIPT OF THIS
26 GRAND JURY PROCEEDING IS MADE PUBLIC. VIOLATION OF THIS
27 ADMONITION MAY BE PUNISHABLE AS CONTEMPT OF COURT.

28 DO YOU UNDERSTAND THAT?

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2015

1 THE WITNESS: YES.

2 MR. FINKELSTEIN: DO YOU HAVE ANY QUESTIONS ABOUT
3 THAT, COUNCILMEMBER CHIRCO?

4 THE WITNESS: NO.

5 MR. FINKELSTEIN: THANK YOU FOR YOUR APPEARANCE
6 TODAY.

7 THE WITNESS: THANK YOU.

8 MR. FINKELSTEIN: WHY DON'T WE TAKE OUR MORNING
9 RECESS.

10 THE FOREPERSON: LET'S RECESS FOR 10 MINUTES.

11 (A BRIEF RECESS WAS TAKEN.)

12 NORA CAMPOS,

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

15 THE WITNESS: I DO.

16 EXAMINATION:

17 BY MR. FINKELSTEIN:

18 Q. COULD YOU PLEASE TELL US YOUR FULL LEGAL NAME.

19 A. THE NAME I USE AT COUNCIL OR MY BIRTH NAME?

20 Q. YOUR LEGAL NAME.

21 A. NORA ELIA CAMPOS.

22 Q. CAN YOU SPELL YOUR MIDDLE AND LAST NAME FOR THE
23 REPORTER.

24 A. E-L-I-A, C-A-M-P-O-S.

25 Q. THANK YOU. I NEED TO READ YOU SOMETHING BEFORE WE
26 BEGIN THE QUESTIONS, SO PLEASE LISTEN CAREFULLY.

27 FIRST I'M GOING TO EXPLAIN TO YOU WHAT THE GRAND
28 JURY IS INVESTIGATING SO YOU UNDERSTAND THE CONTEXT FOR MY

1 QUESTIONS.

2 THE GRAND JURY IS INVESTIGATING THE FOLLOWING:

3 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
4 APPROVED THE SELECTION OF NORCAL TO PROVIDE FOR THE
5 COLLECTION OF RESIDENTIAL WASTE AND RECYCLABLE MATERIALS.

6 WHAT SAN JOSE CITY OFFICIALS KNEW ABOUT INCREASED
7 COSTS THAT MIGHT ARISE FROM THE EMPLOYMENT OF THE TEAMSTERS
8 TO DO RECYCLING WORK FOR NORCAL' S SUBCONTRACTOR, CWS.

9 WHEN SAN JOSE CITY OFFICIALS FIRST LEARNED ABOUT
10 SUCH INCREASED COSTS.

11 WHY SAN JOSE CITY OFFICIALS GAVE SECRET ASSURANCES
12 TO NORCAL THAT ADDITIONAL COSTS ARISING FROM THE USE OF
13 TEAMSTERS BY CWS WHICH WERE NOT INCLUDED IN THE ORIGINAL
14 AGREEMENT WITH NORCAL WOULD NONETHELESS BE PAID FOR BY THE
15 CITY OF SAN JOSE.

16 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
17 APPROVED A RATE HIKE IN MAY 2003 TO PAY FOR THESE ADDITIONAL
18 COSTS.

19 WHETHER SAN JOSE CITY OFFICIALS MISLED THE PUBLIC
20 ABOUT THE TRUE REASONS FOR THIS RATE HIKE.

21 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
22 APPROVED A CONTRACT AMENDMENT TO THE NORCAL AGREEMENT IN

23 2004 TO PAY FOR ADDITIONAL COSTS DUE TO THE USE OF TEAMSTERS
24 FOR THE SORTING OF THE RECYCLABLE MATERIALS.

25 AND WHETHER ANYTHING WAS GIVEN OR PROMISED TO
26 SAN JOSE CITY OFFICIALS AS AN INDUCEMENT TO PAY FOR THESE
27 ACTIONS.

28 SO THAT'S WHAT THE GRAND JURY IS INVESTIGATING,

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2017

1 AND NOW I HAVE TO ADVISE YOU THAT BECAUSE YOU'RE A SAN JOSE
2 CITY OFFICIAL, YOU'RE A SUBJECT OF THE INVESTIGATION. THAT
3 MEANS YOU'RE A PERSON WHOSE CONDUCT IS WITHIN THE SCOPE OF
4 THE GRAND JURY'S INVESTIGATION.

5 YOU CAN REFUSE TO ANSWER ANY QUESTION IF A
6 TRUTHFUL ANSWER TO THE QUESTION WOULD TEND TO INCRIMINATE
7 YOU.

8 THE WITNESS: EXCUSE ME. CAN YOU REPEAT THAT.

9 MR. FINKELSTEIN: YOU CAN REFUSE TO ANSWER ANY
10 QUESTION IF A TRUTHFUL ANSWER TO THE QUESTION WOULD TEND TO
11 INCRIMINATE YOU. THAT'S KNOWN AS THE PRIVILEGE AGAINST
12 SELF-INCRIMINATION. EVERYBODY HAS THAT PRIVILEGE.

13 EVERYTHING THAT YOU DO SAY CAN BE USED AGAINST YOU
14 BY THE GRAND JURY OR AT A SUBSEQUENT LEGAL PROCEEDING.

15 IF YOU HAVE RETAINED A LAWYER, THE GRAND JURY WILL
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16 MAKE YOU A REASONABLE OPPORTUNITY TO STEP OUTSIDE THE GRAND
17 JURY ROOM AND CONSULT WITH A LAWYER IF --

18 A. CAN I ASK A QUESTION?

19 Q. SURE.

20 A. I DIDN'T KNOW THAT WAS AN OPTION. NO ONE INFORMED
21 ME THAT THAT WAS AN OPTION.

22 Q. DO YOU WANT TO CONSULT WITH COUNSEL?

23 A. WELL, I WAS INFORMED THAT I COULD NOT HAVE --

24 Q. YOU CAN'T HAVE A LAWYER INSIDE THE GRAND JURY ROOM.

25 A. BUT I WAS NOT INFORMED I COULD HAVE AN ATTORNEY
26 OUTSIDE.

27 Q. YOU CAN -- OKAY. I'M INFORMING YOU NOW. I'M NOT
28 SUGGESTING YOU NEED AN ATTORNEY, THAT'S UP TO YOU. YOU DO

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2018

1 HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL IF YOU SO
2 DESIRE. THAT WOULD BE AT YOUR OWN EXPENSE, AND IF YOU'RE
3 REPRESENTED BY COUNSEL AND YOU WANTED TO CONSULT WITH
4 COUNSEL BEFORE ANSWERING ANY QUESTIONS, THE GRAND JURY WOULD
5 GIVE YOU AN OPPORTUNITY TO STEP OUTSIDE; YOU CAN TALK TO
6 YOUR ATTORNEY AND COME BACK IN AND DECIDE HOW YOU WANT TO
7 ANSWER THE QUESTION.

8 A. WHEN YOU SAID THE COST IS UP TO ME, THAT MEANS YOU
9 CANNOT USE LEGAL COUNSEL FROM THE CITY OF SAN JOSE; IT MEANS
10 I WOULD HAVE TO OBTAIN MY OWN ATTORNEY? I JUST WANT
11 CLARIFICATION.

12 Q. YES. SO DO YOU WANT TO PROCEED TODAY, OR DO YOU
13 WANT TO COME BACK NEXT WEEK?

14 A. NO, I'LL PROCEED.

15 Q. I KNOW THIS CAUTION, IT'S A SERIOUS CAUTION; IT'S A
16 SERIOUS INVESTIGATION. BUT YOU SHOULD NOT INFER FROM THE
17 FACT I'M READING THIS CAUTION TO YOU, YOU'RE NOT A TARGET OF
18 THE INVESTIGATION AND YOU SHOULD NOT INFER THAT YOU'RE AT
19 RISK OF BEING INDICTED. I JUST HAVE TO READ THIS TO YOU
20 BECAUSE WE'RE INVESTIGATING THE CONDUCT OF CITY OFFICIALS,
21 AND YOU'RE A CITY OFFICIAL.

22 A. I HEAR YOU. I JUST WANT TO BE CLEAR ON WHAT I'M
23 COMMITTING TO AS I MOVE FORWARD AS AN INDIVIDUAL, AND AS A
24 COUNCILMEMBER FOR THE CITY OF SAN JOSE. SO I HOPE YOU'RE
25 NOT OFFENDED I ASKED YOU A QUESTION, BUT THAT WAS NOT MY
26 INTENTION.

27 Q. NO, NO, NOT IN THE LEAST. PLEASE FEEL FREE TO ASK
28 QUESTIONS AT ANY TIME IF YOU'RE UNSURE OR UNCERTAIN HOW TO

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2019

1 PROCEED.

2 I WANT TO CLARIFY SOMETHING. THE CITY ATTORNEY
3 CAN ADVISE YOU REGARDING CITY MATTERS AND AS A
4 COUNCILMEMBER, BUT IF YOU WANT YOUR OWN COUNSEL TO REPRESENT
5 YOU AS AN INDIVIDUAL, SOME PEOPLE CHOOSE TO DO THAT, YOU
6 HAVE THAT RIGHT, BUT THAT COULD NOT BE AT PUBLIC EXPENSE.

7 A. THANK YOU FOR THAT CLARIFICATION.

8 Q. OKAY. ANY OTHER QUESTIONS?

9 A. NOT AT THIS MOMENT.

10 Q. DO YOU UNDERSTAND WHAT I JUST TOLD YOU NOW?

11 A. YES.

12 Q. OKAY. NOW THAT THAT'S OUT OF THE WAY, WHEN WERE
13 YOU FIRST ELECTED TO THE CITY COUNCIL?

14 A. MARCH OF 2001.

15 Q. WHEN DID YOUR TERM BEGIN?

16 A. I BELIEVE IT WAS MARCH; THE ELECTION WAS MARCH 6.
17 IT MUST HAVE BEEN THE FOLLOWING TUESDAY, BUT I DON'T HAVE AN
18 EXACT DATE.

19 Q. THIS WAS A SPECIAL ELECTION?

20 A. YES, I APOLOGIZE. I DON'T HAVE THE EXACT DAY I
21 TOOK THE OATH, BUT I THINK IT WAS A WEEK AFTER THE ELECTION
22 BECAUSE THEY WANTED THE COUNCILMEMBER TO START FILLING THAT
23 POSITION.

24 Q. WHO DID YOU REPLACE?

25 A. I REPLACED COUNCILMEMBER MANNY DIAZ.

26 Q. SO THIS WOULD HAVE BEEN IN 2001?

27 A. MARCH OF 2001, CORRECT.

28 Q. SO AT SOME POINT YOU BECAME AWARE OF THE FACT THAT

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2020

1 THE CITY OF SAN JOSE HAD CONTRACTS WITH HAULERS TO PICK UP
2 THE TRASH AND RECYCLABLES, CORRECT?

3 A. REPEAT THAT AGAIN, PLEASE.

4 Q. AT SOME POINT, YOU LEARNED THAT THE CITY OF SAN
5 JOSE USED CONTRACTORS TO PICK UP THE TRASH AND RECYCLABLES?

6 A. YES.

7 Q. IN OTHER WORDS, SOME CITIES HAVE THEIR OWN CITY
8 DEPARTMENT, BUT SAN JOSE CONTRACTS THAT SERVICE OUT,
9 CORRECT?

10 A. CORRECT.

11 Q. AND YOU LEARNED ALSO THAT THE CITY CHARGES THE
12 PROPERTY OWNERS A FEE FOR THAT SERVICE?

13 A. YES.

14 Q. NOW, DO YOU RECALL THAT IN 2003 THE CITY COUNCIL
15 WAS ASKED TO VOTE ON A NINE PERCENT RATE HIKE IN THOSE
16 GARBAGE COLLECTION FEES?

17 A. I DO RECALL THAT.

18 Q. LET ME SHOW YOU A DOCUMENT. THIS HAS BEEN MARKED

19 AS EXHIBIT 90. YOU CAN SEE THAT FROM WHERE YOU ARE?

20 A. YES.

21 Q. THESE ARE THE MINUTES OF THE CITY COUNCIL
22 PROCEEDINGS FOR TUESDAY, MAY 27, 2003; DO YOU SEE THAT?

23 A. YES.

24 Q. IF WE LOOK AT ITEM 7.1 IN THE MINUTES, THIS ITEM
25 TALKS ABOUT A NINE PERCENT RATE HIKE, DOES IT NOT?

26 A. YES.

27 Q. AND ACCORDING TO THE MINUTES, YOU VOTED IN FAVOR OF
28 IN RATE HIKE, CORRECT?

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2021

1 A. CORRECT.

2 Q. OKAY. I TAKE IT THAT'S BECAUSE YOU SUPPORTED THIS
3 RATE HIKE?

4 A. CORRECT.

5 Q. WHAT DID YOU THINK, AT THE TIME THAT YOU CAST YOUR
6 VOTE BACK IN MAY OF 2003, THE PURPOSE OF THE RATE HIKE WAS?

7 A. WHAT DID I THINK -- I CAN'T THINK SOMETIMES WHAT
8 HAPPENED YESTERDAY. THAT'S ALMOST THREE YEARS AGO, SO I
9 CANNOT TELL YOU WHAT I WAS THINKING AT THAT TIME. I
10 KNOW THAT I NEED TO BE COMPLETELY HONEST.

11 Q. IF YOU DON'T REMEMBER SOMETHING, THAT'S FINE. LET

12 ME SEE IF I CAN ASK THE QUESTION A DIFFERENT WAY THAT MAY
13 HELP YOU RECOLLECT. AT THE TIME YOU CAST YOUR VOTE FOR THIS
14 NINE PERCENT RATE HIKE, DID YOU HAVE ANY INFORMATION THAT
15 SUGGESTED TO YOU THAT THE PURPOSE OF THE RATE HIKE WAS TO
16 BUILD UP MONEY FOR FUNDS TO PAY FOR ADDITIONAL LABOR COSTS?

17 A. I DON'T RECALL THAT INFORMATION.

18 Q. OKAY. I'M NOT SUGGESTING YOU HAD THAT INFORMATION
19 --

20 A. I JUST DON'T RECALL IT.

21 Q. OKAY. NOW, DO YOU RECALL THAT IN THE FOLLOWING
22 YEAR, 2004, THE COUNCIL WAS CALLED TO RESPOND TO CONSIDER
23 THE QUESTION OF WHETHER OR NOT NORCAL SHOULD GET AN
24 ADDITIONAL \$11.25 MILLION BEYOND WHAT THE ORIGINAL AGREEMENT
25 CALLED FOR; DO YOU RECALL THAT?

26 A. I DO RECALL THAT. I DON'T REMEMBER IF -- I DON'T
27 KNOW IF IT WAS IN '04, BUT I DO RECALL THAT.

28 Q. LET ME SHOW YOU ANOTHER DOCUMENT THAT MIGHT HELP

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2022

1 YOU REMEMBER THAT. LET ME SHOW YOU EXHIBIT 92. THESE ARE
2 THE CITY COUNCIL MINUTES FOR TUESDAY, SEPTEMBER 21, 2004.
3 YOU SEE THAT, CORRECT?

4 A. YES.

5 Q. LET ME DIRECT YOUR ATTENTION TO ITEM 7.3 ON THE
6 MINUTES.

7 DO YOU SEE THAT ITEM 7.3 RELATES TO NORCAL'S
8 REQUEST FOR AN AMENDMENT TO THE RECYCLE PLUS INTEGRATED
9 WASTE MANAGEMENT SERVICES AGREEMENT?

10 A. FROM READING IT, YES.

11 Q. SO LOOKING AT THESE MINUTES, HAS THAT REFRESHED
12 YOUR RECOLLECTION ABOUT WHEN THE COUNCIL TOOK UP THIS VOTE?

13 A. NO, I'M READING IT, BUT I'M NOT RECALLING WHEN WE
14 TOOK IT UP.

15 Q. DO YOU RECALL IT WAS SOMETIME IN 2004?

16 A. I DON'T RECALL THE DATE. I'M READING THE MINUTES
17 AND I HAVE THE FACTS IN FRONT OF ME, BUT IF I DIDN'T HAVE
18 THAT PAPER, I WOULDN'T RECALL THE TIME FRAME.

19 Q. LET ME SEE IF I UNDERSTAND WHAT YOU'RE SAYING. YOU
20 RECALL VOTING ON THE ISSUE; YOU'RE JUST NOT SURE WHEN THE
21 VOTE TOOK PLACE?

22 A. CORRECT.

23 Q. DO YOU RECALL IT BEING A FEW YEARS AGO?

24 A. I DON'T HAVE THE TIME FRAME. I RECALL VOTING ON
25 IT, BUT IF I DIDN'T HAVE THE PAPER IN FRONT OF ME, I
26 WOULDN'T KNOW WHAT THE DATE WAS.

27 Q. ALL RIGHT. ACCORDING TO THE MINUTES, YOU VOTED IN
28 FAVOR OF THE AMENDMENT, CORRECT?

1 A. WHERE ARE YOU READING?

2 Q. WHERE IT SAYS "ACTION ON A CALL FOR THE QUESTION,"
3 AND IT SAYS, IT SHOWS THE TALLY OF THE VOTES: SEVEN TO
4 FOUR, THREE NOS AND ONE ABSENT, WHICH IS THE FULL COUNCIL.
5 AND SINCE THE NOS ARE CORTESE, LEZOTTE, AND REED, AND ABSENT
6 IS GREGORY --

7 A. YOU' RE ASKING ME, DO I REMEMBER VOTING ON THAT?

8 Q. YES.

9 A. YES.

10 Q. YOU VOTED IN FAVOR OF THE AMENDMENT?

11 A. YES.

12 Q. I TAKE IT YOU SUPPORTED THE AMENDMENT?

13 A. YES.

14 Q. AND CAN YOU RECALL FOR US WHY IT WAS THAT YOU
15 SUPPORTED THIS AMENDMENT -- LET ME WITHDRAW THAT QUESTION.

16 AT THE TIME YOU VOTED, DID YOU UNDERSTAND THAT A
17 VOTE IN FAVOR OF THE AMENDMENT MEANT THAT NORCAL WOULD BE
18 RECEIVING FROM THE CITY AN ADDITIONAL \$11.25 MILLION OVER
19 AND ABOVE WHAT THE ORIGINAL AGREEMENT CALLED FOR?

20 A. WHAT I RECALL IS READING THE MEMO AND VOTING
21 ACCORDING TO WHAT INFORMATION I HAD BEFORE ME.

22 Q. I UNDERSTAND, BUT MY QUESTION IS MORE SPECIFIC.

23 THAT'S SORT OF A GENERAL ANSWER. I WANT TO KNOW
24 SPECIFICALLY, DID YOU UNDERSTAND WHEN YOU CAST YOUR VOTE
25 THAT VOTING IN FAVOR OF THE AMENDMENT MEANT THAT NORCAL
26 WOULD BE RECEIVING AN ADDITIONAL \$11.25 MILLION OVER AND
27 ABOVE WHAT THE ORIGINAL AGREEMENT CALLED FOR?

28 A. I DON'T RECALL EXACTLY WHAT WAS GOING THROUGH MY

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2024

1 MIND AT THAT TIME WHEN I WAS TAKING THAT VOTE, BUT THE FACT
2 SAYS THAT I DID SUPPORT IT.

3 Q. WHY DID YOU SUPPORT IT?

4 A. YOU'RE ASKING ME TO GO BACK SOME YEARS AND EXPLAIN
5 MY THINKING ON THAT, AND JUST, THAT'S JUST TOO FAR FOR ME.

6 Q. DO YOU RECALL THAT THE AMENDMENT WOULD HAVE GIVEN
7 NORCAL AN ADDITIONAL \$11.25 MILLION, DO YOU RECALL THAT?

8 A. I DO RECALL THAT THEY WERE GOING TO GET AN
9 ADDITIONAL \$11 MILLION, YES.

10 Q. WHAT DID YOU UNDERSTAND THAT \$11 MILLION WAS FOR?

11 A. FOR WORKERS' SALARIES, THAT'S WHAT I UNDERSTOOD.

12 Q. OKAY. DID YOU BELIEVE AT THE TIME THAT IF YOU
13 VOTED AGAINST THIS AMENDMENT, THE WORKERS WOULD NOT GET THE
14 HIGHER WAGES AND BENEFITS?

15 A. REPEAT THAT AGAIN? I'M TRYING TO GO BACK IN MY
16 MIND.

17 Q. DID YOU THINK THAT IF YOU VOTED AGAINST THIS
18 AMENDMENT AND IT FAILED, THE WORKERS WOULD NOT RECEIVE THE
19 HIGHER WAGES AND BENEFITS?

20 A. TO THE BEST OF MY KNOWLEDGE, AS I GO BACK AND THINK
21 ABOUT IT, I BELIEVE THAT WAS MY PROCESS, BUT IT'S VERY FAR
22 FOR ME TO REMEMBER EXACTLY WHAT MY PROCESS OF THINKING WAS.
23 BUT TO THE BEST OF MY KNOWLEDGE --

24 Q. YOU THINK THAT'S YOUR BEST RECOLLECTION OF WHAT YOU
25 THOUGHT?

26 A. I THINK IT'S MY BEST RECOLLECTION.

27 Q. SUCH AS IT IS, RIGHT?

28 A. SUCH AS IT IS.

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2025

1 Q. OKAY. CAN YOU TELL US WHY IT IS YOU THOUGHT THAT
2 IF YOU DID NOT VOTE IN FAVOR -- CAN YOU TELL US WHY IT IS
3 YOU THOUGHT THAT IF THIS AMENDMENT DIDN'T GET PASSED, THE
4 WORKERS WOULD NOT RECEIVE THE HIGHER WAGES AND BENEFITS.

5 A. ARE YOU ASKING ME WHAT I THOUGHT WHEN I TOOK THIS
6 VOTE, OR TODAY OF WHAT I THOUGHT WHAT I WOULD HAVE BEEN
7 THINKING?

8 Q. I'M TRYING TO FIND OUT WHAT YOU THOUGHT --

9 A. I DON'T RECALL. IT WAS SO FAR BACK. I TAKE A LOT
10 OF VOTES, AND I HAVE MY PROCESS AS I'M DELIBERATING
11 AND -- TO THE BEST OF MY KNOWLEDGE, I DON'T RECALL WHAT MY
12 PROCESS OF THINKING WAS AT THAT TIME.

13 Q. DO YOU KNOW SOMEONE NAMED JOHN NICOLETTI?

14 A. YES.

15 Q. WHO IS JOHN NICOLETTI?

16 A. I BELIEVE HE WORKS FOR NORCAL, BUT I DON'T KNOW
17 EXACTLY WHAT HIS TITLE IS.

18 Q. DID YOU TALK TO JOHN NICOLETTI ABOUT THIS AMENDMENT
19 BEFORE YOUR FIRST VOTE?

20 A. NO.

21 Q. WHEN DID YOU FIRST MEET JOHN NICOLETTI?

22 A. I DON'T RECALL.

23 Q. HOW IS IT YOU KNOW JOHN NICOLETTI?

24 A. HE WORKS FOR NORCAL.

25 Q. YES. OKAY. I THINK WE UNDERSTAND THAT. WHAT
26 WE'RE TRYING TO FIND OUT -- WHEN DID YOU FIRST MEET HIM?
27 WHAT WAS THE CIRCUMSTANCES, THE OCCASION? HOW IS IT YOU
28 CAME TO KNOW HIM? LOTS OF PEOPLE WORK FOR DIFFERENT

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1 COMPANIES. THE FACT HE WORKS FOR NORCAL DOESN'T EXPLAIN HOW
2 YOU CAME TO MEET HIM.

3 A. I DON'T RECALL HOW I MET HIM. I DON'T KNOW IF I
4 MET HIM AS A COUNCILMEMBER, BUT I MAY HAVE MET HIM BEFORE I
5 WAS A COUNCILMEMBER. I CAN'T RECALL EXACTLY THE SITUATION
6 WHERE I MET HIM.

7 Q. HAS HE TALKED TO YOU ABOUT ISSUES RELATING TO
8 NORCAL AND THEIR CONTRACT WITH THE CITY?

9 A. NOT THAT I RECALL.

10 Q. DID YOU MEET HIM IN THE CONTEXT OF SOME POLITICAL
11 ACTIVITY, SOME FUNDRAISER? WHAT WAS THE CONTEXT?

12 A. I DON'T RECALL IF I MET HIM, WHAT CONTEXT I MET
13 HIM. I JUST KNOW I MET HIM, I DON'T REMEMBER WHERE OR --

14 Q. HAVE YOU MET ANYONE ELSE FROM NORCAL?

15 A. I HAVE, AND I APOLOGIZE, BUT I DON'T REMEMBER THEIR
16 NAMES.

17 Q. HAVE YOU MET ANY LOBBYISTS FOR NORCAL -- LET ME
18 THROW OUT SOME NAMES. DO YOU KNOW SOMEONE NAMED BARBARA
19 ZEITMAN-OLSEN?

20 A. YES.

21 Q. HOW DO YOU KNOW MISS ZEITMAN-OLSEN?

22 A. I MET HER, I KNOW SHE WORKS FOR NORCAL, BUT I DON'T
23 RECALL HOW I MET HER EITHER.

24 Q. DID YOU EVER HAVE ANY DISCUSSIONS WITH HER BACK AT
25 THE TIME OF THIS VOTE ABOUT THIS PROPOSED AMENDMENT TO THE

26 NORCAL CONTRACT?

27 A. NOT THAT I RECALL.

28 Q. HOW ABOUT MIKE SANGIACOMO; HAVE YOU EVER MET HIM?

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2027

1 A. DO YOU HAVE A PICTURE OF HIM? I'M NOT RECALLING
2 THE NAME.

3 Q. WHAT ABOUT BILL JONES?

4 A. YES. BILL JONES I DO REMEMBER.

5 Q. WHAT WERE THE CIRCUMSTANCES OF YOUR MEETING WITH
6 BILL JONES?

7 A. I DON'T RECALL HOW I MET HIM, BUT I KNOW I MET HIM,
8 I KNOW HIM BUT --

9 Q. AT THE TIME THAT YOU CAST YOUR VOTE IN 2004,
10 SEPTEMBER, DID YOU HAVE ANY INFORMATION ABOUT THE MAYOR'S
11 OFFICE REQUESTING NORCAL'S SUBCONTRACTOR TO CHANGE UNIONS
12 FROM LONGSHOREMEN TO TEAMSTERS?

13 A. DID I HAVE ANY OF THAT INFORMATION?

14 Q. YES.

15 A. NO.

16 Q. AT THE TIME YOU CAST YOUR VOTE ON SEPTEMBER 21,
17 2004 ON THIS AMENDMENT, DID YOU HAVE ANY INFORMATION ABOUT
18 ANYONE IN THE MAYOR'S OFFICE GIVING NORCAL ASSURANCES THAT

19 IF THEIR SUBCONTRACTOR SWITCHED UNIONS FROM LONGSHOREMEN TO
20 TEAMSTERS, THE CITY WOULD MAKE THEM WHOLE BY PAYING EXTRA
21 MONEY TO THEM?

22 A. NO.

23 Q. WHEN DID YOU FIRST LEARN THAT EITHER OF THOSE
24 EVENTS MIGHT HAVE TAKEN PLACE?

25 A. ARE YOU ASKING ME FOR THE DATE?

26 Q. LET ME WITHDRAW THAT. HOW DID YOU FIRST COME TO
27 LEARN THAT EITHER OF THOSE TWO EVENTS MIGHT HAVE TAKEN
28 PLACE, THE REQUEST TO CHANGE UNIONS OR THE ASSURANCE ABOUT

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2028

1 EXTRA MONEY?

2 A. I DON'T REMEMBER THE DATE, BUT I KNOW IT WAS WHEN
3 COUNCILMEMBER -- I DON'T REMEMBER WHAT COUNCILMEMBER MUST
4 HAVE BROUGHT IT BEFORE THE BODY.

5 Q. I THINK YOU MADE IT CLEAR YOU'RE NOT SURE ON THE
6 DATES, SO MY QUESTION IS HOW YOU LEARNED ABOUT IT, AND YOUR
7 ANSWER IS FROM OTHER COUNCILMEMBERS?

8 A. IT WAS, I BELIEVE, IN A PUBLIC SETTING. I DON'T
9 KNOW IF IT WAS RULES OR COUNCIL THAT IT CAME BEFORE, BUT I
10 REMEMBER THE INFORMATION. I MEAN, I REMEMBER HEARING ABOUT

11 IT, BUT I DON'T REMEMBER WHETHER IT WAS COUNCIL OR RULES OR
12 IN THE NEWSPAPER, BUT I REMEMBER HEARING OR READING ABOUT
13 IT, THE ALLEGATIONS.

14 Q. THIS WAS SOMETIME AFTER THE VOTE?

15 A. YES.

16 Q. ARE WE TALKING ABOUT YEARS LATER, MONTHS LATER?

17 A. I DON'T RECALL THE TIMING.

18 Q. NOW, I TAKE IT, AS A COUNCILMEMBER, WHEN THERE'S A
19 VOTE TO BE MADE YOU GET A PACKET OF INFORMATION CONCERNING
20 THE ISSUES, RIGHT?

21 A. CORRECT.

22 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 93.
23 DO YOU RECALL RECEIVING A COPY OF THIS MEMO FROM
24 COUNCILMEMBERS LEZOTTE AND REED IN CONNECTION WITH THE
25 SEPTEMBER 21, 2004 COUNCIL AGENDA ITEM 7.3, THE ITEM WE HAVE
26 BEEN TALKING ABOUT?

27 A. YOU'RE ASKING ME DO I RECALL RECEIVING THIS?

28 Q. YES.

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1 A. I DON'T RECALL RECEIVING IT.

2 Q. DO YOU HAVE ANY REASON TO BELIEVE YOU DIDN'T
3 RECEIVE IT PRIOR TO THE VOTE?

4 A. NO, I DON'T HAVE ANY REASON TO BELIEVE I DIDN'T
5 RECEIVE IT; I JUST DON'T RECALL.

6 Q. THE REASON I'M BRINGING THIS TO YOUR ATTENTION IS
7 YOU WEREN'T SURE HOW YOU LEARNED ABOUT WHETHER THERE HAD
8 BEEN MISREPRESENTATIONS MADE. AND IF YOU LOOK AT ITEM TWO
9 IN THE MEMO, THERE'S A REFERENCE TO ANY PROMISES OR
10 REPRESENTATION THAT MAY HAVE BEEN MADE TO NORCAL WERE NOT
11 DISCLOSED TO THE COUNCIL WHEN NORCAL WAS APPROVED AS THE
12 PREFERRED VENDOR. DO YOU SEE THAT?

13 A. MM-HMM.

14 Q. SO I'M ASKING, I GUESS MY QUESTION IS WHETHER OR
15 NOT YOU SORT OF CONNECTED THE DOTS AT THE TIME OF THE VOTE,
16 OR THAT HAPPENED SOME TIME AFTER THE VOTE.

17 A. I DON'T RECALL WHEN I CONNECTED THE DOTS.

18 Q. DO YOU THINK IT WAS AT THE TIME YOU CAST YOUR VOTE
19 OR SOMETIME AFTERWARD?

20 A. YOU'RE ASKING ME TO MAKE A CONNECTION OF WHEN I
21 THINK I CONNECTED THE DOTS.

22 Q. I DON'T --

23 A. UNLESS YOU ARE ASKING ME TO MAKE AN ASSUMPTION OR
24 TAKE A CRACK AT IT, BUT I DON'T RECALL WHEN I CONNECTED THE
25 DOTS.

26 Q. LET ME BE CLEAR. I DON'T WANT YOU TO GUESS. ON
27 THE OTHER HAND, YOU CAN GIVE AN ANSWER EVEN THOUGH YOU DON'T
28 HAVE 100 PERCENT RECALL OF SOMETHING, AND YOU CAN QUALIFY

1 YOUR ANSWER.

2 A. HOW WOULD I DO THAT?

3 Q. YOU MIGHT SAY -- ONE MIGHT SAY, I'M NOT ENTIRELY
4 SURE, BUT MY BEST RECOLLECTION AT THIS TIME IS THAT X.
5 OKAY?

6 A. AND THIS ONE, I DON'T RECALL WHEN I CONNECTED THE
7 DOTS, BUT THANK YOU FOR THAT CLARIFICATION AS WE MOVE
8 FORWARD.

9 Q. OKAY. SO I GUESS YOUR RECOLLECTION IS THAT YOU
10 VOTED IN FAVOR OF THIS \$11 MILLION AMENDMENT, AND AT THE
11 TIME YOU THOUGHT A FAVORABLE VOTE MEANT THAT THE WORKERS
12 WOULD GET THE HIGHER WAGES AND BENEFITS; A REJECTION WOULD
13 MEAN THEY WOULDN'T GET THE HIGHER WAGES AND BENEFITS?

14 A. THAT'S WHAT I RECALL.

15 Q. OKAY. SO LET'S LOOK AT EXHIBIT 100, WHICH ARE THE
16 TUESDAY DECEMBER 14, 2004 MINUTES. LET'S LOOK AT ITEM 7.2,
17 WHICH IS, AGAIN, THE SECOND VOTE ON THE NORCAL AMENDMENT,
18 AND LET'S LOOK AT THE ACTION TAKEN.

19 BASED ON THE ACTION TAKEN, APPARENTLY YOU VOTED IN
20 FAVOR ON THE SECOND OCCASION ON THE AMENDMENT; IS THAT
21 CORRECT?

22 A. WHERE ARE YOU READING?

23 Q. SORRY. I SKIPPED A PAGE HERE. WE ARE AT ITEM 7.2,
24 AND IF WE GO UP TO THE ACTION, YOU VOTED IN FAVOR BACK ON
25 DECEMBER 14 AS WELL, CORRECT?

26 A. CORRECT.

27 Q. WAS IT STILL YOUR UNDERSTANDING AT THAT TIME THAT A
28 VOTE IN FAVOR OF THE AMENDMENT MEANT THE WORKERS GOT THE

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1 HIGHER WAGES AND BENEFITS, AND A VOTE AGAINST THE AMENDMENT
2 MEANT THAT THE WORKERS DID NOT RECEIVE THE HIGHER WAGES AND
3 BENEFITS?

4 A. TO THE BEST OF MY RECOLLECTION, YES.

5 MR. FINKELSTEIN: LET ME SEE IF THE JURORS HAVE
6 ANY QUESTIONS.

7 A JUROR: JUST ONE.

8 BY MR. FINKELSTEIN:

9 Q. AT THE TIME OF THESE VOTES IN SEPTEMBER AND
10 DECEMBER, WERE YOU UNDER THE IMPRESSION THAT THE CITY HAD
11 SOME LEGAL OBLIGATION TO PAY FOR THESE ADDITIONAL LABOR
12 COSTS?

13 A. (NO RESPONSE.)

14 Q. IN OTHER WORDS, THAT THERE WAS SOMETHING LEGALLY
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15 THAT REQUIRED THAT THE CITY PAY THESE ADDITIONAL LABOR
16 COSTS?

17 A. I DON'T RECALL THAT. I DON'T RECALL WHAT YOU'RE
18 ASKING ME.

19 Q. YOU DON'T RECALL ONE WAY OR THE OTHER, OR ARE YOU
20 SAYING I DON'T RECALL THINKING IT WAS A LEGAL OBLIGATION?

21 A. I DON'T RECALL WHETHER THERE WAS A -- I DON'T
22 RECALL WHETHER THERE WAS A LEGAL -- I'M NOT RECALLING THAT.

23 Q. YOU'RE NOT RECALLING ONE WAY OR THE OTHER?

24 A. NO.

25 MR. FINKELSTEIN: ANY OTHER QUESTIONS?

26 BY MR. FINKELSTEIN:

27 Q. YOU TOLD US YOU MAY HAVE MET MR. NICOLETTI BEFORE
28 YOU BECAME A COUNCILMEMBER?

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1 A. YES.

2 Q. DO YOU RECALL WHAT THE CIRCUMSTANCES OF THE MEETING
3 WERE, OR WHAT THE OCCASION WAS?

4 A. NO, I DON'T.

5 MR. FINKELSTEIN: ANY OTHER QUESTIONS? ALL RIGHT.

6 WELL, THANK YOU VERY MUCH FOR COMING IN THIS

7 MORNING. BEFORE YOU GO, I NEED TO EXPLAIN TO YOU CERTAIN
8 THINGS.

9 FIRST OF ALL, YOU'RE NOT EXCUSED, BUT YOU'RE FREE
10 TO GO. AND WHAT THAT MEANS IS AS LONG AS THE INVESTIGATION
11 CONTINUES, IF WE HAVE ADDITIONAL QUESTIONS FOR YOU, YOU MAY
12 BE REQUIRED TO RETURN AND ANSWER ADDITIONAL QUESTIONS. DO
13 YOU UNDERSTAND THAT?

14 THE WITNESS: YES.

15 MR. FINKELSTEIN: SECOND OF ALL, THE FOREPERSON IS
16 GOING TO READ SOMETHING TO YOU ABOUT THE GRAND JURY SECRECY
17 AND CONFIDENTIALITY, SO PLEASE LISTEN CAREFULLY.

18 THE FOREPERSON: THIS IS AN ADMONITION REGARDING
19 CONFIDENTIALITY.

20 YOU ARE ADMONISHED NOT TO REVEAL TO ANY PERSON,
21 EXCEPT AS DIRECTED BY THE COURT, WHAT QUESTIONS WERE ASKED
22 OR WHAT RESPONSES WERE GIVEN OR ANY OTHER MATTERS CONCERNING
23 THE NATURE OR SUBJECT OF THE GRAND JURY'S INVESTIGATION
24 WHICH YOU LEARNED DURING YOUR APPEARANCE BEFORE THE GRAND
25 JURY, UNLESS AND UNTIL SUCH TIME AS THE TRANSCRIPT OF THIS
26 GRAND JURY PROCEEDING IS MADE PUBLIC. VIOLATION OF THIS
27 ADMONITION MAY BE PUNISHABLE AS CONTEMPT OF COURT.

28 DO YOU UNDERSTAND THAT?

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1 THE WITNESS: YES.

2 MR. FINKELSTEIN: IN OTHER WORDS, YOU CAN'T TELL
3 PEOPLE WHAT QUESTIONS WERE ASKED, WHAT ANSWERS YOU GAVE.
4 YOU CAN'T TELL PEOPLE WHAT THE GRAND JURY IS INVESTIGATING.
5 ALL OF THAT WOULD BE COVERED BY THE ADMONITION, AND YOU'RE
6 NOT ALLOWED TO DISCLOSE THAT.

7 IF YOU CHOOSE TO SEEK LEGAL COUNSEL, YOU CAN
8 DISCLOSE TO YOUR ATTORNEY IF AND ONLY IF YOUR ATTORNEY
9 AGREES NOT TO FURTHER DISCLOSE THE INFORMATION.

10 DO YOU UNDERSTAND?

11 THE WITNESS: YES.

12 MR. FINKELSTEIN: IN OTHER WORDS, YOU CAN'T TELL
13 YOUR LAWYER WHAT HAPPENED, GET LEGAL ADVICE, AND THE LAWYER
14 CAN GET ON TV TONIGHT AND TELL PEOPLE WHAT'S GOING ON AT THE
15 GRAND JURY. HE OR SHE WOULD HAVE TO KEEP THE SAME
16 CONFIDENCE YOU'RE REQUIRED TO KEEP.

17 THE WITNESS: CAN I ASK YOU A PROCESS QUESTION?

18 MR. FINKELSTEIN: SURE.

19 THE WITNESS: ON MY CALENDAR IT SAYS I AM COMING
20 TO COURT TO TALK ABOUT NORCAL. I JUST WANT TO KNOW, HOW
21 SHOULD I HANDLE THAT?

22 MR. FINKELSTEIN: YOU CAN TELL PEOPLE YOU WERE
23 SUMMONED BEFORE THE GRAND JURY AND YOU ANSWERED ALL THEIR
24 QUESTIONS.

25 THE WITNESS: THANK YOU FOR THE CLARIFICATION.

26 MR. FINKELSTEIN: BUT YOU CAN'T SAY WHAT QUESTIONS
27 WERE ASKED, WHAT ANSWERS YOU GAVE, WHAT THE GRAND JURY WAS
28 INTERESTED IN OR WHAT THE GRAND JURY WAS INVESTIGATING.

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1 OKAY?

2 THE WITNESS: YES.

3 MR. FINKELSTEIN: THANK YOU VERY MUCH.

4 THE WITNESS: THANK YOU.

5 MR. FINKELSTEIN: WELL, WE'RE NOT GOING TO BE IN
6 SESSION THIS AFTERNOON. I HOPE IT DOESN'T DISAPPOINT MANY
7 PEOPLE. WE WILL BE IN SESSION MOST OF TOMORROW, STARTING
8 TOMORROW AT 10:00 AM, AND I NOW BELIEVE WE HAVE ANOTHER
9 WITNESS WE WANT TO CALL TUESDAY MORNING, ASSUMING THAT
10 PERSON IS AVAILABLE TUESDAY MORNING.

11 WE'RE RUNNING OUT OF WITNESSES. THE PERSON ON
12 TUESDAY MAY BE THE LAST WITNESS. WE'RE NEARING THE END.

13 A JUROR: THEY ARE RUNNING OUT OF ANSWERS.

14 THE FOREPERSON: NOTHING ON MONDAY?

15 MR. FINKELSTEIN: THE NEXT TIME IN COURT IS
16 TOMORROW AT 10:00, AND 10:00 O'CLOCK ON TUESDAY.

17 THE FOREPERSON: LET'S ADJOURN UNTIL TOMORROW AT

18 10: 00 0' CLOCK.

19 THE FOREPERSON: THANK YOU VERY MUCH.

20 (COURT WAS ADJOURNED FOR THE DAY.)

21

22

23

24

25

26

27

28

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1 SAN JOSE, CALI FORNI A

MAY

2 12, 2006.

3

4

PROCEEDINGS:

5

(ROLL WAS CALLED BY THE FOREPERSON.)

6

BARBARA LUNA,

7

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

8

AS FOLLOWS:

9

THE WITNESS: I DO.

Vol 12G-1
EXAMINATION:

10

11

BY MR. FINKELSTEIN:

12

Q. GOOD MORNING. COULD YOU PLEASE STATE YOUR FULL
13 NAME, LEGAL NAME FOR THE RECORD.

14

A. BARBARA LUNA.

15

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

16

A. L-U-N-A.

17

Q. AND MISS LUNA, WHERE ARE YOU EMPLOYED?

18

A. I'M EMPLOYED AT THE NATIONAL LABOR RELATIONS BOARD
19 REGION 32 IN OAKLAND, CALIFORNIA.

20

Q. WHAT IS YOUR POSITION WITH THE NLRB?

21

A. I'M A SUPERVISOR IN FIELD EXAMINER.

22

Q. HOW LONG HAVE YOU BEEN WITH THE NLRB?

23

A. APPROXIMATELY 29 YEARS.

24

Q. CONGRATULATIONS. I WANT TO DIRECT YOUR ATTENTION
25 TO THE YEAR 2000. DURING THAT YEAR, DID THE NLRB RECEIVE AN
26 UNFAIR LABOR PRACTICE CHARGE FROM TEAMSTER LOCAL 350
27 DIRECTED AGAINST A COMPANY CALLED CALIFORNIA WASTE
28 SOLUTIONS, INC., OR CWS?

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1

A. YES. ACTUALLY, WE RECEIVED TWO.

2

Q. WHAT WAS -- WHEN WAS THE FIRST ONE RECEIVED?

3 A. THEY WERE BOTH RECEIVED ON OCTOBER 6, 2000.

4 Q. OKAY. AND THIS WAS A CHARGE BROUGHT BY TEAMSTERS
5 LOCAL 350 AGAINST CWS?

6 A. YES.

7 Q. DID ONE OF THE CHARGES INVOLVE CWS' S INTENT TO
8 EXTEND A COLLECTIVE BARGAINING AGREEMENT THAT CWS HAD WITH
9 THE ILWU LOCAL 6 IN OAKLAND DOWN TO A NEW OPERATION IN
10 SAN JOSE?

11 A. YES.

12 Q. AND COULD YOU JUST EXPLAIN VERY GENERALLY FOR THOSE
13 OF US WHO MAY NOT PRACTICE IN LABOR LAW WHAT THE PROCESS IS
14 GENERALLY WHEN A CHARGE IS MADE, WHAT THE STEPS ARE.

15 A. UH -- CAN I ASK MY COUNSEL HOW TO RESPOND TO THAT?
16 I'M A LITTLE UNCERTAIN AS TO WHETHER I CAN GO INTO MY
17 AGENCY' S PROCEDURES.

18 MR. FINKELSTEIN: OKAY. LET ME WITHDRAW THAT
19 QUESTION.

20 BY MR. FINKELSTEIN:

21 Q. CAN YOU TELL US WHAT THE PROCESS WAS -- CAN YOU
22 TELL US HOW THIS PARTICULAR CHARGE, THE ONE CHALLENGING THE
23 EXTENSION OF THE ILWU COLLECTIVE BARGAINING AGREEMENT DOWN
24 TO SAN JOSE, HOW THAT CHARGE WAS PROCESSED?

25 A. UH -- I RECEIVED IT -- I THINK IT' S OKAY FOR ME TO
26 SAY THAT WHEN WE RECEIVE CHARGES, WE SEND A COPY OF THE
27 CHARGE TO THE CHARGED PARTY AS WELL AS THE PERSON WHO FILED
28 THE CHARGE.

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1 Q. THE CHARGED PARTY IN THIS CASE WOULD BE CWS?

2 A. YES.

3 Q. AND THEN WHAT HAPPENED?

4 A. THEN I RECEIVED SOME INFORMATION FROM THE CHARGING
5 PARTY AS TO WHAT THE CHARGE WAS ABOUT, AND THEN I RECEIVED A
6 TELEPHONE CALL INITIALLY FROM SOMEONE WHO THOUGHT THEY WOULD
7 BE REPRESENTING CWS. THEY LATER ADVISED ME THAT THEY
8 WEREN'T GOING TO BE REPRESENTING CWS AND THAT I SHOULD CALL
9 PAUL ROTTENBERG AND GAVE HIS PHONE NUMBER.

10 Q. THEN DID YOU FOLLOW UP AND CALL MR. ROTTENBERG?

11 A. YES, I DID.

12 Q. THEN WHAT HAPPENED?

13 A. I CALLED HIM AND HE TOLD ME THAT HE WAS AN
14 INDEPENDENT CONSULTANT AND THAT HE WAS ACTING AS CFO FOR
15 CALIFORNIA WASTE SOLUTIONS, AND I BELIEVE HE WANTED TO KNOW
16 WHAT THE CHARGE CONCERNED, AND I TOLD HIM THAT GENERALLY IT
17 WAS ABOUT THE LETTER THAT CWS HAD SENT TO THE MAYOR OF
18 SAN JOSE IN WHICH HE SAID THAT WHEN HE TOOK OVER THE
19 RECYCLING CONTRACT HE WOULD APPLY HIS CONTRACT WITH ILWU,
20 LOCAL 6 IN OAKLAND, WHICH COVERED HIS OAKLAND FACILITY, TO

21 THOSE EMPLOYEES THAT WOULD BE COVERED IN HIS NEW SAN JOSE
22 FACILITY.

23 Q. OKAY. DID YOU SAY ANYTHING ELSE TO HIM?

24 A. YES, I DID.

25 Q. WHAT WAS THAT?

26 A. HE TOLD ME THAT THAT WAS WHAT THEIR CONTRACT WITH
27 ILWU IN OAKLAND CALLED FOR, THAT IF HE GOT A NEW FACILITY
28 WITHIN THEIR JURISDICTION, THAT HE HAD A CONTRACT SAYING HE

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1 WOULD HAVE TO APPLY HIS OAKLAND CONTRACT TO THAT NEW
2 FACILITY. AND I EXPLAINED TO HIM THAT THERE WERE SEVERAL
3 PROBLEMS WITH THAT. I SAID AT FIRST THERE WAS A SINGLE
4 PRESUMPTION FACILITY, OR SINGLE FACILITY PRESUMPTION, EXCUSE
5 ME. AND AN EMPLOYER CANNOT NECESSARILY ENTER INTO A
6 CONTRACT WITH THE UNION COVERING A NEW FACILITY BEFORE THE
7 EMPLOYEES ARE HIRED.

8 I ALSO SAID THAT IT WAS MY UNDERSTANDING THAT THE
9 CITY OF SAN JOSE WAS GOING TO REQUIRE HIM TO HIRE ALL OF THE
10 EMPLOYEES THAT WERE CURRENTLY DOING THE RECYCLING JOB, OFFER
11 THEM EMPLOYMENT, AND, GENERALLY SPEAKING, IF HE HIRES THE
12 MAJORITY OF THOSE EMPLOYEES, THEN HE WOULD HAVE TO RECOGNIZE
13 AND BARGAIN WITH THOSE EMPLOYEES' BARGAINING REPRESENTATIVE

14 THAT WAS CURRENTLY IN PLACE, WHICH WAS TEAMSTERS LOCAL
15 350.

16 Q. OKAY. WAS ANYTHING ELSE DISCUSSED IN THAT
17 CONVERSATION?

18 A. YES --

19 Q. BY THE WAY, WHAT WAS THE DATE OF THIS CONVERSATION?

20 A. THIS WAS ON OCTOBER 11, 2000.

21 Q. OKAY.

22 A. I ALSO CITED TO HIM TWO SUPREME COURT CASES. MY
23 NOTES SAY FALL RIVER AND BURNS, BUT I THINK IT WAS FALL
24 RIVER DYEING AND MANUFACTURING AND BURN SECURITY, WHICH ARE
25 CASES HAVING TO DO WITH SUCCESSORSHIP IN EMPLOYMENT
26 RELATIONS.

27 Q. WHEN YOU SAY SUCCESSORSHIP, YOU MEAN UNDER WHAT
28 CIRCUMSTANCES A NEW EMPLOYER HAS TO RECOGNIZE THE UNION OF

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1 THE OLD EMPLOYER?

2 A. CORRECT. I TOLD HIM AT THAT TIME THAT IT APPEARED
3 THAT LOCAL 350 WAS GOING TO BE GENEROUS AND JUST OFFERED TO
4 HAVE THEM DO A CARD CHECK AND THAT THAT WOULD ALLOW LOCAL 6,
5 ILWU LOCAL 6 AND THE CARPENTERS, WHO REPRESENTED SOME OF THE

6 GREEN TEAM RECYCLING EMPLOYEES AT THE TIME, TO ALSO
7 PARTICIPATE IN THIS CARD CHECK AGREEMENT WHEREBY UNIONS
8 WOULD HAVE CARDS AUTHORIZING A UNION TO REPRESENT THEM AND
9 THEN A NEUTRAL PARTY COULD VERIFY WHO THE REPRESENTATIVE
10 WOULD BE.

11 Q. SO THESE CARD CHECK AGREEMENTS ARE A WAY OF SORT OF
12 SHORTCUTTING THE ELECTION PROCESS, ESSENTIALLY?

13 A. YES, THAT'S PROBABLY CORRECT.

14 Q. SO, IN OTHER WORDS, UNDER THAT -- DID HE KNOW WHAT
15 A CARD CHECK AGREEMENT WAS WHEN YOU TOLD HIM?

16 A. HE DIDN'T ASK ME ANY QUESTIONS ABOUT IT; I ASSUME
17 HE DID. I GUESS I WOULD ALSO LIKE TO POINT OUT I'M NOT AN
18 ATTORNEY, SO I CAN'T GIVE A LEGAL OPINION ON THESE MATTERS.

19 Q. I UNDERSTAND.

20 A. I ONLY KNOW WHAT I KNOW FROM MY EXPERIENCE.

21 Q. YOU WERE TELLING US ABOUT YOUR OCTOBER 11, 2000
22 PHONE CALL WITH PAUL ROTTENBERG. ANYTHING ELSE DISCUSSED IN
23 THAT CONVERSATION?

24 A. UH -- LET'S SEE. HE DIDN'T SEEM TO BE RECEPTIVE TO
25 THE IDEA, BUT I CAN'T RECALL WHAT HE SAID. I DID TELL HIM
26 THAT ABSENT A CARD CHECK, HE COULD ALMOST CERTAINLY COUNT ON
27 HAVING TO RECOGNIZE AND BARGAIN WITH TEAMSTERS LOCAL 350.
28 HE TOLD ME HE THOUGHT SOMETHING WOULD GET WORKED OUT; THEN

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1 HE SAID THE WORST THAT COULD HAPPEN IS THAT HE WOULD HAVE TO
2 RECOGNIZE LOCAL 350.

3 I OFFERED TO CALL ILWU LOCAL 6 AND DISCUSS THE
4 SITUATION WITH THEM. HE HAD -- DIDN'T APPEAR TO HAVE ANY
5 PROBLEMS WITH THAT.

6 Q. OKAY. NOW, IN THIS OCTOBER 11, 2000 CONVERSATION,
7 DID YOU TELL HIM THAT THE NLRB HAD MADE A FINDING THAT THE
8 AGREEMENT TO RECOGNIZE THE ILWU AT THE NEW SAN JOSE FACILITY
9 WAS AN UNFAIR LABOR PRACTICE?

10 A. NO.

11 Q. DID YOU TELL HIM THAT THE NLRB HAD ISSUED A
12 COMPLAINT ON THE CHARGE THAT HAD BEEN FILED?

13 A. NO.

14 Q. AND THAT'S THE NORMAL FLOW OF THE CHARGE, IS IT
15 NOT, THE CHARGE IS MADE AND THEN NEXT STEP IS, IF IT
16 PROCEEDS FURTHER, IS FOR A COMPLAINT TO BE FILED, RIGHT?

17 A. CORRECT. ALTHOUGH THERE CAN BE INTERMEDIATE STEPS,
18 INCLUDING INVESTIGATING THE WHOLE MATTER.

19 Q. DID YOU HAVE ANY FURTHER COMMUNICATIONS WITH CWS OR
20 THEIR REPRESENTATIVES?

21 A. YES.

22 Q. WHAT WAS THE NEXT COMMUNICATION?

23 A. UH -- LET'S SEE. I CAN'T RECALL WHETHER HE CALLED
24 ME OR I CALLED HIM LATER IN THE MONTH, BUT I BELIEVE HE

25 WANTED TO COME IN WITH HIS CLIENT AND MEET WITH ME. THAT
26 WOULD HAVE BEEN DAVID DUONG, SO WE DID HAVE A MEETING IN MY
27 OFFICE.

28 Q. WHEN WAS THAT?

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1 A. IT WAS ON OCTOBER 27, 2000.

2 Q. AND THIS WOULD BE YOUR OFFICES IN OAKLAND,
3 CALIFORNIA?

4 A. CORRECT.

5 Q. WHAT HAPPENED THERE?

6 A. OKAY. AT THAT POINT I EXPLAINED TO THEM THAT THE
7 TROUBLING ASPECT OF THE CASE WAS THE EMPLOYER'S LETTER TO
8 THE MAYOR OF SAN JOSE SAYING THAT IT WOULD APPLY TO THE
9 CONTRACT WITH ILWU LOCAL 6, TO THE EMPLOYEES THAT IT WOULD
10 BE HIRING IN SAN JOSE. AND AT THAT POINT THE COMPANY AGAIN
11 RAISED THE ISSUE THAT THAT WAS, IT WAS CONTRACTUALLY BOUND
12 TO APPLY ITS CONTRACT WITH LOCAL, ILWU LOCAL 6, BECAUSE THAT
13 WAS WHAT WAS IN THE CONTRACT WITH ILWU. AND I EXPLAINED TO
14 HIM THAT THERE WERE SEVERAL AREAS OF THE LAW THAT HE COULD
15 BE VIOLATING IF HE APPLIED HIS ILWU LOCAL 6 CONTRACT TO THE
16 NEW SAN JOSE CONTRACT. AND I USED THE WORD CONTRACT NOT IN

17 THE LABOR AGREEMENT MATTER, BUT CONTRACT TO PROVIDE
18 RECYCLING SERVICES.

19 I AGAIN EXPLAINED THAT THERE WAS A PRESUMPTION
20 THAT A SINGLE FACILITY WAS A SEPARATE UNIT AND THAT HE COULD
21 NOT APPLY THE CONTRACT WITHOUT A MAJORITY OF THE EMPLOYEES
22 WORKING THERE DESIGNATING ILWU LOCAL 6 AS THEIR BARGAINING
23 REPRESENTATIVE. WE GOT INTO A DISCUSSION ABOUT THIS SINGLE
24 FACILITY PRESUMPTION, AND I RECALL I TOLD HIM THAT THIS
25 PRESUMPTION WAS REBUTTABLE, WHICH IS TO SAY IT'S NOT ALWAYS
26 THE CASE THAT IF YOU HAVE ONE FACILITY, YOU CAN'T REBUT THE
27 PRESUMPTION THAT IT'S THE ONLY APPROPRIATE UNIT. BUT I DID
28 TELL HIM THAT IT WAS GOING TO BE PRETTY DIFFICULT IN THIS

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1 CASE. GENERALLY, IT WAS ONLY REBUTTABLE WHERE THERE WAS
2 SIGNIFICANT INTERCHANGE BETWEEN FACILITIES AND EMPLOYEES
3 GOING BACK AND FORTH TO WORK IN BOTH FACILITIES AND WHERE
4 THE DISTANCES WERE SHORTER. I COULD HAVE GONE INTO MORE
5 DETAIL; I DON'T RECALL.

6 I SAID THAT EVEN WITH THEIR PROVISION IN THEIR
7 CONTRACT WITH ILWU LOCAL 6, THAT DIDN'T MEAN THEY COULD
8 ENFORCE IT, BECAUSE FEDERAL LABOR LAWS MIGHT BE IN CONFLICT.
9 AND AGAIN, I OFFERED TO CALL ROBERTO FLOTTE, WHO WAS THE

10 PRESIDENT OF ILWU LOCAL 6 AT THE TIME, AND DISCUSS THIS
11 ISSUE WITH HIM IF IT WOULD HELP.

12 Q. OKAY. ANYTHING ELSE?

13 A. YES.

14 Q. OKAY.

15 A. THEN I WANTED TO EXPLAIN TO THEM THAT IF A MAJORITY
16 OF THE EMPLOYEES WHO THEY HIRED TO RUN THEIR NEW RECYCLING
17 FACILITY HAD BEEN REPRESENTED BY TEAMSTERS LOCAL 350, THAT
18 THEY WOULD THEN HAVE THE OBLIGATION TO RECOGNIZE THE BARGAIN
19 WITH LOCAL 350, AND I TOLD THEM THAT THIS WAS THE LAW AS IT
20 RELATED TO SUCCESSORSHIP. AND I TOLD THEM THAT THERE WERE
21 TWO SUPREME COURT CASES GOVERNING THE CRITERIA FOR
22 SUCCESSORSHIP, AND AGAIN TOLD THEM ABOUT FALL RIVER DYEING
23 AND BURNS SECURITY.

24 THEN MR. DUONG INDICATED HE WAS AWARE HE HAD TO
25 OFFER WORK TO THOSE EMPLOYEES WHO WERE BEING DISPLACED BY
26 CWS' S ASSUMPTION OF THE CONTRACT, BUT THEN INDICATED THAT IT
27 WAS NOT A SURE THING THAT THE LOCAL 350 PEOPLE WOULD BE IN A
28 MAJORITY, SINCE THEY WOULD STILL HAVE TO HIRE A LOT OF

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1 PEOPLE OFF THE STREET BECAUSE THEIR RECYCLING METHOD WAS

2 MUCH MORE LABOR INTENSIVE. I SAID THAT WAS IN THE FUTURE
3 AND NO ONE COULD SAY WITH CERTAINTY HOW THE WORKFORCE WOULD
4 BE MADE UP.

5 AGAIN, I DISCUSSED THE FACT THAT LOCAL 350, THE
6 TEAMSTERS, WOULD BE WILLING TO AGREE TO HAVING A CARD CHECK
7 WHICH WOULD INVOLVE ANY OF THE INTERESTED UNIONS. AND AFTER
8 THAT, THEY SEEMED TO UNDERSTAND WHAT THE CHARGES WERE ABOUT
9 MUCH BETTER, AND MR. DUONG SAID THAT HE WOULD TRY TO WORK
10 OUT SOMETHING WITH THE UNIONS NEXT WEEK, AND HE WAS
11 INTERESTED IN MAKING THE CHARGES GO AWAY.

12 Q. OKAY. SO IN THIS MEETING ON OCTOBER 27, 2000,
13 THAT'S THE CORRECT DATE, RIGHT?

14 A. YES.

15 Q. DID YOU TELL EITHER MR. ROTTENBERG OR MR. DUONG
16 THAT THE NLRB HAD MADE A FINDING THAT THEIR ATTEMPT TO
17 RECOGNIZE ILWU LOCAL 6 AT THE NEW SAN JOSE FACILITY WAS AN
18 UNFAIR LABOR PRACTICE?

19 A. NO, I DID NOT.

20 Q. DID YOU TELL HIM THAT THE NLRB HAD ISSUED A
21 COMPLAINT AS A PRELUDE TO MAKE A FINDING ON THAT ISSUE?

22 A. NO, I DID NOT.

23 Q. JUST A MOMENT. WHAT WAS THE NEXT THING THAT
24 HAPPENED IN CONNECTION WITH THE HANDLING AND DISPOSITION OF
25 THIS UNFAIR LABOR PRACTICE CHARGE WE HAVE BEEN TALKING
26 ABOUT?

27 A. UH -- I DON'T KNOW THAT I CAN TELL YOU THE NEXT

28 THING INTERNALLY THAT HAPPENED. ARE YOU INTERESTED IN THE

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1 NEXT CONVERSATION I HAD WITH ANYONE FROM CWS OR --

2 Q. UH -- I'M NOT ASKING FOR INTERNAL CONVERSATIONS;
3 I'M ASKING ABOUT -- WELL, DID YOU HAVE MORE CONVERSATION
4 WITH CWS?

5 A. YES. I HAD FURTHER CONVERSATIONS WITH
6 MR. ROTTENBERG.

7 Q. I'M SORRY. TELL US WHAT THE NEXT CONVERSATION WAS.

8 A. OKAY. I BELIEVE IT WAS ON NOVEMBER 27, I GOT A
9 CALL FROM MR. ROTTENBERG. I BELIEVE I GOT A CALL FROM HIM;
10 LET ME JUST SEE IF I CAN FIND THAT. YES, I DID. HE TOLD ME
11 THAT CWS WAS NOW WILLING TO CONSIDER HAVING A CARD CHECK. I
12 ASKED HIM IF HE HAD SEEN THE ONE WHICH THE TEAMSTERS HAD
13 PRESENTED TO THE CITY OF SAN JOSE. HE TOLD ME THAT HE HAD
14 NOT. I TOLD HIM THAT I WOULD FAX HIM A COPY, AND I TOLD HIM
15 THAT ALTHOUGH IT WAS SPECIFIC TO CWS AND TEAMSTERS LOCAL
16 350, THAT IT WOULD NOT PRECLUDE ANY CARD CHECK AGREEMENTS
17 WITH ANY OTHER UNIONS. HE TOLD ME HE WOULD LOOK IT OVER,
18 AND I TOLD HIM WE COULD TALK IN A FEW DAYS.

19 Q. WHAT DO YOU MEAN BY IT WOULD NOT PRECLUDE ANY OTHER
20 CARD CHECK AGREEMENTS WITH ANY OTHER UNION?

21 A. I BELIEVE IT WAS WORDED BROADLY ENOUGH THAT IF
22 ANOTHER UNION WANTED TO BE INVOLVED IN THE WHOLE CARD CHECK
23 PROCESS, SUCH AS THE CARPENTERS OR ILWU LOCAL 6, THAT IT WAS
24 BROAD ENOUGH THEY COULD ALSO BE PART OF THE CARD CHECK
25 PROCESS.

26 Q. OTHER UNIONS COULD PARTICIPATE AS WELL IN AN EFFORT
27 TO GAIN A MAJORITY OF PREFERENCE CARDS FOR THAT UNION?

28 A. CORRECT.

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1 Q. OKAY. ANYTHING ELSE?

2 A. HE CALLED ME OR I CALLED HIM SEVERAL DAYS LATER,
3 AND HE SAID THAT HE WOULD NOT SIGN THE CARD CHECK AGREEMENT,
4 BUT THAT HE COULD AGREE TO SENDING A REVISED LETTER TO THE
5 CITY OF SAN JOSE SAYING THAT THEY WOULD DEFER TO THE WISHES
6 OF THEIR WORKERS. AND I TOLD HIM I WOULD DISCUSS WHAT WE
7 WOULD REQUIRE WITH THE UNION AND THAT I'D GET BACK TO HIM.

8 Q. DID YOU HAVE ANY FURTHER CONVERSATIONS OR
9 COMMUNICATIONS WITH CWS?

10 A. I DO NOT BELIEVE I EVER DID.

11 Q. WHAT WAS THE DISPOSITION OF THE CHARGE?

12 A. THE TEAMSTERS WITHDREW BOTH THE CHARGES.

13 Q. DO YOU KNOW WHAT DATE THAT WAS?

14 A. YES, I DO. EXCUSE ME.

15 Q. SURE.

16 A. I HAVE A COPY OF IT HERE. IT'S A PUBLIC DOCUMENT,
17 IF YOU WISH --

18 Q. I DIDN'T HEAR WHAT YOU SAID?

19 A. IT'S A PUBLIC DOCUMENT, SO YOU IF YOU WISH TO HAVE
20 IT, YOU MAY, BUT IT WAS, THE WITHDRAWAL APPROVAL LETTER WENT
21 OUT ON DECEMBER 13, 2000.

22 Q. OKAY. SO THAT'S A LETTER APPROVING WITHDRAWAL OF
23 THE CHARGE?

24 A. CORRECT.

25 Q. SO THAT TERMINATED THE PROCESSING OF THE CHARGE?

26 A. RIGHT.

27 Q. THAT CONCLUDED THE PROCESSING OF THE CHARGE?

28 A. THAT CONCLUDED EVERYTHING.

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1 Q. I THINK YOU MENTIONED THERE WERE TWO CHARGES THAT
2 WERE FILED BY THE TEAMSTERS?

3 A. YES.

4 Q. DO YOU RECALL WHAT THE SECOND CHARGE WAS?

5 A. WELL, YOU DIDN'T TELL ME WHAT THE FIRST CHARGE WAS.

6 Q. OKAY. I THINK THE FIRST CHARGE IS WHAT WE HAVE
7 BEEN TALKING ABOUT, WHICH IS THE ATTEMPTS BY CWS TO
8 RECOGNIZE ILWU LOCAL 6 AT THE NEW SAN JOSE FACILITY.

9 A. RIGHT. WELL, THEY BOTH INVOLVED THE SAME ISSUE,
10 BUT THE CHARGES ALLEGED DIFFERENT VIOLATIONS OF THE NATIONAL
11 LABOR RELATIONS ACT, AND ONE OF THEM WAS A CHARGE ALLEGING A
12 VIOLATION OF SECTION 8(E) OF THE NATIONAL LABOR RELATIONS
13 ACT, AND THAT HAS ITS OWN PARTICULAR CHARGE FORM. SO
14 WHEREAS MANY CHARGES CAN ALLEGE A LOT OF VIOLATIONS WITHIN
15 THE SAME CHARGE, AN 8(E) CHARGE HAS TO BE FILED ON A CERTAIN
16 FORM, AND THE OTHER CHARGE VIOLATED, ALLEGED THAT CWS
17 VIOLATED SECTION 8(A)1 OF THE ACT, AND IT WAS ALMOST LIKE A
18 DERIVATIVE VIOLATION. IF THE CWS VIOLATED SECTION 8(E),
19 THEN DERIVATIVELY IT COULD HAVE VIOLATED SECTION 8(A)1. SO
20 THEY WERE CONSIDERED PRETTY MUCH TOGETHER.

21 Q. SO WOULD IT BE ACCURATE TO SAY THAT BASICALLY IT
22 WAS THE SAME FACTS, BUT ALLEGING DIFFERENT SECTIONS OF THE
23 ACT TO BE VIOLATED?

24 A. I THINK THAT WOULD BE FAIR TO SAY.

25 Q. NOW, THIS LETTER DISPOSING OF THESE CHARGES, YOU
26 SAID THAT WAS A PUBLIC DOCUMENT?

27 A. YES.

28 Q. DO YOU HAVE AN EXTRA COPY?

1 A. YES.

2 Q. WHY DON'T WE TAKE A LOOK AT THAT. THANK YOU.

3 WHY DON'T WE MARK THAT THAT AS EXHIBIT 134.

4 THE FOREPERSON: SO MARKED.

5 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
6 JURY EXHIBIT GRAND JURY 134.)

7 BY MR. FINKELSTEIN:

8 Q. JUST FOR THE RECORD, WE'VE NOW MARKED AS EXHIBIT
9 134, THIS IS A COPY OF A LETTER THAT WENT OUT FROM THE NLRB
10 APPROVING THE WITHDRAWAL OF THESE CHARGES WE HAVE BEEN
11 TALKING ABOUT THIS MORNING, CORRECT?

12 A. CORRECT.

13 MR. FINKELSTEIN: I THINK THAT'S ALL THE QUESTIONS
14 WE HAVE. LET ME SEE IF THE JURORS HAVE ANY.

15 BY MR. FINKELSTEIN:

16 Q. YOU TOLD US ABOUT A TELEPHONE CALL WITH PAUL
17 ROTTENBERG ON OCTOBER 11, 2000. DO YOU RECALL THAT?

18 A. RIGHT.

19 Q. DO YOUR NOTES REFLECT THE TIME OF THAT PHONE
20 CONVERSATION?

21 A. NO, THEY DON'T.

22 Q. LET ME ASK YOU THIS: ARE YOU ABLE TO TELL US ABOUT
23 YOUR -- YOU MENTIONED THAT YOU MAY HAVE HAD CONTACT WITH

24 I LWU LOCAL 6 REGARDING THIS CHARGE?

25 A. UH -- CORRECT.

26 Q. ARE YOU ABLE TO TELL US ABOUT THAT CONTACT?

27 A. I WOULD REQUEST TO SPEAK WITH MY ATTORNEY. CAN I
28 JUST GO OUT?

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1 Q. SURE. WE' LL WAIT.

2 (WHEREUPON, THE WITNESS LEFT THE COURTROOM.)

3 MR. FINKELSTEIN: LET ME JUST EXPLAIN SOMETHING,
4 LADIES AND GENTLEMEN. AN EMPLOYEE OF A FEDERAL AGENCY
5 CANNOT BE COMPELLED TO GIVE TESTIMONY IN A STATE COURT
6 PROCEEDING. UNDER OUR SYSTEM OF GOVERNMENT, THE FEDERAL LAW
7 TRUMPS STATE LAW, SO WE HAVE TO SEEK PERMISSION TO GET THE
8 FEDERAL EMPLOYEE TO TESTIFY ABOUT WHAT THEY DID FOR THAT
9 FEDERAL AGENCY. WE HAVE DONE THAT IN ORDER TO GET THIS
10 TESTIMONY TO YOU; THEY HAVE GIVEN LIMITED AUTHORITY, SO WE
11 HAVE TO RESPECT THAT AND STAY WITHIN THE AUTHORITIES
12 GRANTED.

13 THE DIFFERENCE IS IF A POSTMAN SEES AN ACCIDENT ON
14 THE STREET, THEN WE CAN CALL HIM TO STATE COURT AS A WITNESS
15 ABOUT THAT ACCIDENT. IF WE WANT THE POSTAL WORKER TO TELL
16 US ABOUT THE OPERATION OF THE POST OFFICE IN A STATE COURT,

17 WE HAVE TO GET PERMISSION FROM THE POST OFFICE TO DO THAT,
18 AND THEY CAN GRANT IT OR DENY IT OR GRANT LIMITED
19 PERMISSION, WHICH IS WHAT HAPPENED IN THIS CASE. AND
20 THERE'S A LAWYER FROM THE NLRB OUTSIDE WHO IS GOING TO
21 CONSULT WITH THE WITNESS AND DECIDE WHETHER THE QUESTION
22 POSED IS WITHIN THE SCOPE OF AUTHORIZATION, SO THAT'S WHAT
23 WAS GOING ON.

24 THE WITNESS: IN RESPONSE TO YOUR QUESTION, WHILE
25 I BELIEVE IT GOES SLIGHTLY BEYOND WHAT I'M AUTHORIZED TO
26 DISCUSS BECAUSE IT'S A PARTY OUTSIDE OF CWS, I'M GOING TO
27 ANSWER IT BECAUSE I DON'T THINK THERE WAS ANYTHING
28 SUBSTANTIAL. I PLACED A CALL TO ROBERTO FLOTTE AND I NEVER

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1 GOT A RESPONSE. I NEVER SPOKE WITH HIM.

2 MR. FINKELSTEIN: THAT MAKES IT EASY. THANK YOU
3 VERY MUCH.

4 ANY OTHER QUESTIONS? THAT'S IT. THANK YOU VERY
5 MUCH.

6 THE WITNESS: THANK YOU VERY MUCH.

7 MR. FINKELSTEIN: THERE IS ONE OTHER THING. WE
8 HAVE TO GIVE YOU AN ADMONITION ABOUT SECRECY.

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

18 MR. FINKELSTEIN: YOU CAN DISCUSS IT WITH NLRB
19 COUNSEL PROVIDED THEY AGREE NOT TO FURTHER DISCLOSE TO THE
20 PUBLIC THE NATURE OF THIS PROCEEDING.

21 THE WITNESS: OKAY. THANK YOU VERY MUCH.

22 MR. FINKELSTEIN: SHALL WE GET MR. JONES BACK IN?

23 BILLY RAY JONES,
24 HAVING BEEN PREVIOUSLY SWORN, TESTIFIED ON HIS OATH AS
25 FOLLOWS:

26 EXAMINATION (RESUMED)

27 BY MR. FINKELSTEIN:

28 Q. MR. JONES, I'LL JUST REMIND YOU YOU'RE STILL UNDER

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1 OATH, HAVING BEEN PREVIOUSLY SWORN IN THIS INVESTIGATION.

2 DO YOU UNDERSTAND THAT?

3 A. YES, I DO.

4 Q. MR. JONES, I'M GOING TO ASK SOME QUESTIONS THAT YOU
5 DIDN'T ANSWER LAST TIME, SO LET ME JUST GO OVER THOSE
6 QUESTIONS WITH YOU AGAIN. DO YOU KNOW AN ATTORNEY NAMED
7 TODD THOMPSON?

8 A. YES, I DO.

9 Q. AND WERE YOU INTERVIEWED BY ATTORNEY TODD THOMPSON
10 ON JUNE 24 OF 2003?

11 A. I'M NOT CERTAIN IF THAT'S THE DATE THAT I MET WITH
12 TODD, BUT I WAS INTERVIEWED BY HIM AT SOME POINT IN EARLY
13 2003.

14 Q. AND DID THAT INTERVIEW LAST APPROXIMATELY THREE
15 HOURS?

16 A. THAT'S PROBABLY ABOUT RIGHT; IT WAS A COUPLE HOURS,
17 WITHIN THAT RANGE.

18 Q. NOW, DID YOU TELL TODD THOMPSON THAT PREPARATION
19 FOR SUBMISSION OF THE NORCAL SAN JOSE BID BEGAN AS EARLY AS
20 MARCH OF 2000?

21 A. UH -- I MAY HAVE TOLD HIM THAT. IT SOUNDS ABOUT
22 RIGHT; I MAY HAVE TOLD HIM THAT.

23 Q. THAT WAS YOUR RECOLLECTION OF WHEN PREPARATION OF
24 THE NORCAL BID IN SAN JOSE BEGAN?

25 A. LET ME THINK ABOUT THAT FOR A SECOND. THAT IS
26 PROBABLY ABOUT THE TIME THAT THE ACTUAL WORK FOR THE RFP
27 RESPONSE, THE TECHNICAL WORK BEGAN, BUT I THINK OUR PLANNING

28 IN TERMS OF STRATEGY TO GET INTO THE MARKET STARTED WELL

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1 BEFORE THAT. SO THAT'S PROBABLY APPROXIMATELY CORRECT.

2 Q. OKAY. DID YOU TELL TODD THOMPSON THAT YOU AND JOHN
3 NICOLETTI PLAYED GOLF WITH MAYOR GONZALES ON MARCH 6 IN AN
4 EFFORT TO BEGIN BUILDING A PRESENCE IN SAN JOSE?

5 A. I MAY HAVE TOLD HIM THAT, YES.

6 Q. THAT WAS TRUE?

7 A. I CAN'T SAY THE DATE IS ACCURATE, BUT WE DID PLAY
8 GOLF WITH THE MAYOR.

9 Q. WOULD THAT HAVE BEEN AROUND MARCH 6 OF 2000?

10 A. IT WAS PROBABLY IN THAT TIME FRAME, YEAH.

11 Q. WHO ELSE PARTICIPATED IN THAT GOLF GAME?

12 A. THE OTHER GENTLEMAN IN THE FOURSOME'S NAME, I DON'T
13 RECALL. HE WAS AT THE TIME THE MAYOR'S BODYGUARD, BUT I
14 DON'T RECALL HIS NAME.

15 Q. WHEN HE WAS A POLICE OFFICER?

16 A. I BELIEVE HE WAS A POLICE OFFICER, YES.

17 Q. WHO PAID FOR THE MAYOR'S ROUND OF GOLF?

18 A. THAT I DON'T KNOW.

19 Q. WHO PAID FOR YOUR ROUND?

20 A. NORCAL.

21 Q. WERE THERE DISCUSSIONS WITH THE MAYOR ABOUT
22 NORCAL'S PROPOSAL DURING THIS GOLF GAME?

23 A. NO, NOT SPECIFICALLY ABOUT THE PROPOSAL. IT WAS
24 MORE TALKING ABOUT NORCAL AS A COMPANY, AND JUST TALKING
25 ABOUT GOLF.

26 Q. WHO ARRANGED THE GOLF GAME WITH THE MAYOR?

27 A. IT WAS PART OF CRIME STOPPERS, WHICH IS AN
28 ORGANIZATION HERE IN SANTA CLARA COUNTY, AND THERE WAS THE

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1 ABILITY TO GOLF IN THE MAYOR'S FOURSOME IF YOU SPONSORED AT
2 A CERTAIN LEVEL, AND WE CHOSE TO SPONSOR AT THAT LEVEL IN
3 ORDER TO GET THAT.

4 Q. WHERE DID THE GOLF GAME TAKE PLACE?

5 A. YOU'LL HAVE TO EXCUSE ME, I'M NOT MUCH OF A GOLFER.
6 I BELIEVE IT'S CALLED COYOTE CREEK. I THINK IT'S DOWN 101
7 NEAR MORGAN HILL. I MAY HAVE THE NAME WRONG.

8 Q. DID YOU TELL TODD THOMPSON THAT AFTER THE RFP WAS
9 RELEASED TO POTENTIAL BIDDERS ON APRIL 28, DURING SUBSEQUENT
10 MONTHS YOU AND OTHERS COURTED MEMBERS OF THE CITY COUNCIL
11 AND THE MAYOR AND HIRED BARBARA OLSEN, POLITICAL CONSULTANT,
12 TO HELP SECURE THE CONTRACT?

13 A. I DON'T BELIEVE I TOLD HIM THAT. COURTED IS NOT A
14 WORD THAT I WOULD USE.

15 Q. DID YOU TELL HIM ANYTHING THAT COULD HAVE SUGGESTED
16 THAT TO HIM?

17 A. I MAY HAVE TOLD HIM THAT WE MET WITH MEMBERS OF THE
18 CITY COUNCIL FROM TIME TO TIME.

19 Q. AND THE MAYOR?

20 A. AND THE MAYOR AS WELL, YES.

21 Q. AND DID YOU TELL HIM ANYTHING ABOUT THE PURPOSE OF
22 THESE MEETINGS?

23 A. UH -- WHAT WAS THE TIME FRAME AGAIN?

24 Q. THIS WOULD HAVE BEEN AFTER THE RFP WAS RELEASED ON
25 APRIL 28.

26 A. ANY MEETINGS AFTER THAT WOULD HAVE BEEN JUST TO
27 TALK ABOUT NORCAL IN GENERAL AND, AGAIN, INTRODUCING THE
28 COMPANY UNDER THE NAME NORCAL TO MEMBERS OF THE CITY

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2053

1 COUNCIL.

2 Q. WHAT ABOUT TO THE MAYOR?

3 A. AS WELL AS THE MAYOR. I'M SORRY. YES.

4 Q. DIDN'T YOU ALREADY DO THAT IN THE GOLF GAME IN

5 MARCH?

6 A. YES.

7 Q. SO WHAT WAS DIFFERENT ON THIS NEXT OCCASION WITH
8 THE MAYOR?

9 A. YOU KNOW, I GUESS I CAN'T SAY SPECIFICALLY THAT I
10 MET WITH THE MAYOR DURING, IMMEDIATELY AFTER THE RFP. I MAY
11 HAVE NOT MET DIRECTLY WITH HIM. IT MAY HAVE BEEN OTHER
12 COUNCILMEMBERS.

13 Q. WHICH COUNCILMEMBERS?

14 A. WELL, AT SOME TIME IN BETWEEN THE RFP COMING OUT
15 AND THE INITIAL VOTE IN OCTOBER, I MET WITH EVERY SINGLE
16 COUNCILMEMBER AT LEAST ONCE, BUT I COULDN'T TELL YOU IN THAT
17 TIME FRAME SPECIFICALLY WHO I MAY OR MAY NOT HAVE MET WITH.

18 Q. DID YOU TELL TODD THOMPSON THAT YOU WORKED WITH
19 MR. ROTTENBERG ON TERMS OF THE CONTRACT BETWEEN NORCAL AND
20 CWS?

21 A. UH -- I BELIEVE I DID TELL HIM THAT, YES.

22 Q. AND WAS THAT TRUE?

23 A. YES.

24 Q. DID YOU TELL TODD THOMPSON THAT NORCAL WAS GIVEN AN
25 OPPORTUNITY TO MAKE A PRESENTATION TO AND ANSWER QUESTIONS
26 FROM A REVIEW COMMITTEE FROM THE CITY OF SAN JOSE IN
27 CONNECTION WITH NORCAL'S PROPOSAL?

28 A. I MAY HAVE TOLD HIM THAT, ALSO.

1 Q. AND IS IT TRUE THAT NORCAL WAS GIVEN SUCH AN
2 OPPORTUNITY?

3 A. YES.

4 Q. AND DID YOU PARTICIPATE ALONG WITH MIKE SANGIACOMO
5 AND DAVID DUONG IN THAT VIDEOTAPE PRESENTATION TO THE
6 SAN JOSE REVIEW COMMITTEE REGARDING THE NORCAL PROPOSAL?

7 A. I PARTICIPATED IN A MEETING WITH THE REVIEW
8 COMMITTEE WHERE WE MADE A PROPOSAL. I DON'T REMEMBER IT
9 BEING VIDEOTAPED SPECIFICALLY. AND IT WAS MIKE, DAVID,
10 MYSELF, AND OTHERS FROM NORCAL THAT WERE IN THAT MEETING.

11 Q. DID YOU TELL TODD THOMPSON THAT THROUGHOUT
12 SEPTEMBER YOU ATTENDED STRATEGY MEETINGS REGARDING THE
13 POTENTIAL CONTRACT?

14 A. I MAY HAVE TOLD HIM THAT I ATTENDED MEETINGS DURING
15 SEPTEMBER REGARDING THE CONTRACT; I DON'T KNOW IF I
16 SPECIFICALLY SAID STRATEGY MEETINGS. THEY MAY HAVE BEEN
17 START-UP MEETINGS --

18 Q. WHAT KIND OF MEETINGS WERE YOU REFERRING TO?

19 A. MOST LIKELY THEY WERE MEETINGS TALKING ABOUT WHAT A
20 START-UP WAS GOING TO LOOK LIKE, WHAT THE CONTRACT WOULD
21 LOOK LIKE, AND TALKING ABOUT PROPERTY AND JUST SORT OF THE
22 DIFFERENT THINGS YOU HAVE TO COORDINATE. WHO WAS GOING TO
23 DO IT, THINGS LIKE THAT.

24 Q. DID YOU TELL TODD THOMPSON ON SEPTEMBER 22 YOU
25 RECEIVED A TELEPHONE CALL FROM THE CITY'S ESD INVITING YOU
26 TO STOP BY AND PICK UP A COPY OF THE CITY STAFF'S
27 RECOMMENDATIONS?

28 A. I DON'T REMEMBER TELLING HIM THAT SPECIFICALLY, AND

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1 I COULDN'T SWEAR TO THE DATE, BUT WE WERE NOTIFIED AT SOME
2 POINT BY ESD TO COME BY AND GET A COPY OF THEIR
3 RECOMMENDATION.

4 Q. DID YOU STOP BY AND PICK UP THE RECOMMENDATION?

5 A. YES. ACTUALLY, WE WENT TO THE OLD CITY HALL, AND I
6 BELIEVE THAT'S WHERE IT WAS. NO, I'M SORRY. WE WENT TO THE
7 ESD OFFICES LOCATED AT 777 FIRST STREET, I BELIEVE, AND WENT
8 INTO ONE OF THEIR CONFERENCE ROOMS AND WERE SHOWN A
9 POWERPOINT PRESENTATION AND THEN GIVEN OUR COPY.

10 Q. WAS -- DO YOU RECALL THAT BEING THE FIRST OCCASION
11 WHEN THAT INFORMATION BECAME PUBLICLY AVAILABLE?

12 A. YES. AS I RECALL, THEY MET WITH ALL OF THE BIDDERS
13 THAT DAY IN THE SAME FORMAT AS WHAT I WAS TOLD AND GAVE THEM
14 ALL THE SAME PRESENTATION.

15 Q. SO YOU WOULD HAVE KNOWN ABOUT THE FAVORABLE

16 RECOMMENDATION IN LATE SEPTEMBER OF 2000, CORRECT?

17 A. UH -- I BELIEVE THAT'S RIGHT, YEAH.

18 Q. DID YOU TELL TODD THOMPSON THAT YOU WENT TO ESD
19 WITH RICH LANSER AND BARBARA OLSEN TO PICK UP A COPY OF THE
20 STAFF RECOMMENDATION?

21 A. I DON'T RECALL SPECIFICALLY TELLING HIM THAT, BUT
22 THEY DID GO WITH ME.

23 Q. WHETHER OR NOT YOU TOLD HIM THAT, THAT'S A TRUE
24 STATEMENT?

25 A. IT IS A TRUE STATEMENT, YES.

26 Q. DID YOU TELL TODD THOMPSON THAT BETWEEN THAT DAY,
27 THE DAY YOU PICKED UP THE STAFF REPRESENTATION FROM THE ESD,
28 AND OCTOBER 10, WHICH WAS THE DATE OF THE FIRST CITY COUNCIL

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1 VOTE ON NORCAL'S PROPOSAL, NORCAL WAS ENGAGED IN FURIOUS
2 POLITICKING?

3 A. I WOULD NOT HAVE USED THAT PHRASE, NO.

4 Q. DID YOU TELL HIM ANY PART OF THAT STATEMENT?

5 A. I MAY HAVE TOLD HIM THAT WE MET WITH CITY
6 COUNCILMEMBERS TO NOW DISCUSS OUR ACTUAL PROPOSAL AND WHY WE
7 THOUGHT IT WAS A GOOD AND STRONG PROPOSAL AND WE AGREED WITH
8 THE RECOMMENDATION OF THE STAFF.

9 Q. AND WHO DID YOU MEET WITH?

10 A. AGAIN, I BELIEVE DURING THAT TIME FRAME WE MET
11 WITH, I BELIEVE, WITH EVERY SITTING COUNCILMEMBER AND THE
12 MAYOR. I'M TRYING TO THINK NOW. I BELIEVE WE GOT -- I
13 BELIEVE WE MET ALL 10 PLUS THE MAYOR, I'M PRETTY SURE.

14 Q. NOW, YOUR MEETING WITH THE MAYOR, WOULD THAT BE THE
15 MEETING ON OCTOBER 6, OR WAS THAT A DIFFERENT MEETING?

16 A. I BELIEVE IT WAS THE MEETING OF OCTOBER 6.

17 Q. THAT INCLUDED THE MEETING ON OCTOBER 6?

18 A. I BELIEVE SO, YES.

19 Q. WAS THERE ANOTHER MEETING WITH THE MAYOR IN THAT
20 TIME FRAME OTHER THAN THE MEETING ON OCTOBER 6?

21 A. NOT THAT I CAN RECALL.

22 Q. DID YOU TELL TODD THOMPSON ON SEPTEMBER 29 YOU
23 CALLED RON PROTO, P-R-O-T-O, TO DISCUSS THE ILWU?

24 A. I'M NOT CERTAIN THAT I TOLD HIM THAT, AND I CAN'T
25 BE CERTAIN OF THE DATE, BUT I DID IN FACT CALL RON PROTO TO
26 HAVE A DISCUSSION ABOUT ILWU.

27 Q. WHO IS RON PROTO?

28 A. RON PROTO AT THE TIME WAS A NORCAL EMPLOYEE. HE

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1 WAS MY COUNTERPART IN SAN FRANCISCO, AND HE HAD WORKED IN
2 THE OAKLAND MARKET AND HAD WORKED AT A COMPANY THAT HAD
3 CONTRACTS WITH ILWU, SO HE KNEW OF THEM AND KNEW THEIR
4 CONTACTS AND I DID NOT, SO I WAS TRYING TO GET INFORMATION
5 FROM HIM. I CALLED AND TALKED TO HIM, TRYING TO UNDERSTAND
6 THEIR MAKEUP.

7 Q. TRYING TO UNDERSTAND THEIR WHAT?

8 A. THEIR STRUCTURE, HOW THEY WERE MADE UP.

9 Q. WHY DID YOU WANT TO KNOW THAT?

10 A. JUST SO WE COULD KNOW WHAT KIND OF PARTNER WE MIGHT
11 HAVE IN SAN JOSE THROUGH CWS.

12 Q. DID YOU TELL TODD THOMPSON THAT BY THIS TIME NORCAL
13 AND CWS HAD HATCHED A PLAN TO HAVE THE ILWU ASSERT ITS RIGHT
14 TO ORGANIZE CWS'S SAN JOSE FACILITY AND THAT YOU THOUGHT
15 PROTO MIGHT ASSIST YOU?

16 A. I DON'T BELIEVE I SAID THAT, NO.

17 Q. DID YOU SAY ANY PART OF THAT?

18 A. UH -- I MAY HAVE TOLD HIM THAT WE BELIEVED THE ILWU
19 HAD THE RIGHT TO ORGANIZE DOWN THERE BECAUSE THAT WAS OUR
20 UNDERSTANDING OF, OR IT WAS MY UNDERSTANDING THAT THEY HAD
21 THAT RIGHT, BUT I DID NOT TELL HIM PROTO WAS GOING TO HELP
22 US HATCH A PLAN OR ANYTHING LIKE THAT.

23 Q. DID ANYBODY HATCH A PLAN TO HAVE THE ILWU ASSERT
24 ITS RIGHT TO ORGANIZE CWS'S SAN JOSE FACILITY?

25 A. NOT THAT I'M AWARE OF.

26 Q. WAS THERE A PLAN TO HAVE ILWU ASSERT ITS RIGHT TO

27 ORGANIZE CWS IN SAN JOSE?

28 A. AS I UNDERSTAND IT, I WASN'T PART OF THE AGREEMENT,

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1 BUT AS I UNDERSTAND IT, CWS, DAVID DUONG'S COMPANY, HAD AN
2 EXISTING LABOR AGREEMENT WITH THE ILWU THAT IN THEIR MIND
3 EXTENDED INTO SANTA CLARA COUNTY, AND THAT WAS THEIR PLAN, I
4 GUESS.

5 Q. DID YOU TELL TODD THOMPSON THAT -- BY THE WAY, WHEN
6 YOU WERE TALKING TO TODD THOMPSON BACK IN JUNE OF 2003, DID
7 YOU HAVE AVAILABLE SOME KIND OF DATE PLANNER OR ELECTRONIC
8 CALENDAR SYSTEM TO ASSIST YOU IN RECOLLECTING DATES?

9 A. I BELIEVE I DID, YES.

10 Q. SO AND THE DATES THAT YOU GAVE MR. THOMPSON IN THAT
11 INTERVIEW, WOULD THAT HAVE BEEN BASED ON YOUR CALENDAR AT
12 THE TIME?

13 A. IT COULD HAVE BEEN. A GOOD BIT OF THEM COULD HAVE
14 BEEN, YES.

15 Q. WOULD YOU THINK WHATEVER DATES YOU MAY HAVE GIVEN
16 MR. THOMPSON BACK THEN WOULD HAVE BEEN PROBABLY THE MOST
17 ACCURATE DATES AS COMPARED TO TODAY?

18 A. I WOULD THINK SO. THEY WOULD BE MORE ACCURATE THAN
19 MY MEMORY TODAY, CERTAINLY.

20 Q. OKAY. DID YOU TELL TODD THOMPSON THAT SOME TIME
21 BETWEEN SEPTEMBER 22, JUST TO ORIENT YOU, THAT'S THE DATE
22 THE ESD RECOMMENDATION WAS RELEASED, AND THIS MEETING WITH
23 PROTO, THE TEAMSTERS HAD INDICATED TO NORCAL OR CWS THAT
24 THEY EXPECTED TO ORGANIZE SAN JOSE'S CWS FACILITY?

25 A. UH -- I COULDN'T TELL YOU THE TIME FRAME ON THAT IS
26 100 PERCENT ACCURATE, BUT THE TEAMSTERS DEFINITELY ASSERTED
27 TO US THAT THEY BELIEVED THEY HAD TERRITORIAL RIGHTS TO
28 THOSE EMPLOYEES, THAT THEY WERE GOING TO ORGANIZE.

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1 Q. THAT WAS PRIOR TO THE OCTOBER 6, 2000 MEETING WITH
2 THE MAYOR, RIGHT?

3 A. DEFINITELY PRIOR TO THAT, YES.

4 Q. DID YOU TELL TODD THOMPSON THAT, DURING THE WEEK
5 PRECEDING OCTOBER 10, THAT'S THE TUESDAY COUNCIL VOTE ON THE
6 FIRST CONSIDERATION OF THE PROPOSAL, YOU AND MIKE SANGIACOMO
7 MET WITH MOST OF THE CITY COUNCIL MEMBERS?

8 A. I DON'T BELIEVE I TOLD HIM WE MET WITH MOST OF THE
9 COUNCIL MEMBERS. I MET WITH MOST OF THE COUNCIL MEMBERS,
10 CERTAINLY, AND I THINK WE GOT TO MEET WITH ALL OF THEM.
11 MIKE, AS I RECALL, MET WITH THE MAYOR, THE OCTOBER 6

12 MEETING, THE MAYOR. I BELIEVE HE MET WITH JOHN DIQUISTO,
13 WHO WAS A COUNCILMEMBER AT THE TIME. THAT'S THE ONLY
14 SPECIFIC ONE I CAN REMEMBER MEETING WITH WAS JOHN DIQUISTO.

15 Q. DID ANY OF COUNCILMEMBERS YOU MET WITH IN THE DAYS
16 LEADING UP TO THE OCTOBER 10, 2000 VOTE ASK YOU TO GET CWS
17 TO SWITCH UNIONS FROM LONGSHOREMEN TO TEAMSTERS?

18 A. NO, NONE OF THE COUNCILMEMBERS ASKED ME TO DO THAT.

19 Q. WHICH COUNCILMEMBERS DO YOU RECALL MEETING WITH?

20 A. UH -- WELL, YOU SEE, I'M TRYING TO THINK HERE WHO
21 WAS ON THE COUNCIL AT THE TIME. I BELIEVE WE MET WITH KEN
22 YEAGER, CHUCK REED, GEORGE SHIRAKAWA, CINDY CHAVEZ, MANNY
23 DIAZ. I CAN'T REMEMBER; I BELIEVE WE MET WITH DAVE CORTESE,
24 NORA CAMPOS, I THINK.

25 Q. WAS SHE ON THE COUNCIL IN 2000?

26 A. I THINK SHE WAS. I'M TRYING TO REMEMBER. PAT
27 DANDO. AND I KNOW I'M MISSING SOME BECAUSE THERE WERE TEN
28 PLUS THE MAYOR, AND I DON'T RECALL WHO I'M MISSING OFF THE

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1 TOP OF MY HEAD.

2 Q. DID YOU TELL TODD THOMPSON THAT ON OCTOBER 6 YOU
3 AND MIKE SANGIACOMO ATTENDED A MEETING WITH THE MAYOR?

4 A. I MAY HAVE TOLD HIM THAT, YES.

5 Q. AND WAS THAT TRUE?

6 A. YES.

7 Q. DID YOU TELL TODD THOMPSON THAT YOU NO LONGER
8 REMEMBERED WHETHER DUONG ATTENDED THIS MEETING WITH THE
9 MAYOR, BUT THAT IT MAKES SENSE THAT HE WAS THERE BECAUSE
10 THEY MET IN A BIG ROOM?

11 A. I DON'T BELIEVE I SAID THAT, NO.

12 Q. DID YOU TELL HIM YOU NO LONGER REMEMBERED WHETHER
13 OR NOT MR. DUONG ATTENDED THE MEETING?

14 A. I DON'T REMEMBER SPECIFICALLY WHAT I TOLD TODD ON
15 THAT DAY ABOUT DAVID DURING THE INTERVIEW, BUT MY
16 RECOLLECTION IS THAT I BELIEVE HE WAS IN THE ROOM DURING THE
17 DISCUSSION.

18 Q. SO IF MR. THOMPSON TOOK NOTES OF HIS INTERVIEW OF
19 YOU AND SAYS THAT YOU TOLD HIM IN '03 THAT YOU NO LONGER
20 REMEMBERED WHETHER DUONG WAS IN THE ROOM, WOULD HE BE WRONG
21 ABOUT THAT?

22 A. UH -- I DON'T RECALL MAKING THAT COMMENT.

23 Q. OKAY. DID YOU TELL TODD THOMPSON THAT DURING
24 CONVERSATIONS SUBSEQUENT TO THIS OCTOBER 6, 2000 MEETING
25 WITH THE MAYOR, MIKE SANGIACOMO HAD SUGGESTED TO YOU THAT
26 THE TEAMSTERS ISSUES -- THE TEAMSTERS ISSUE WAS DISCUSSED
27 DURING THAT MEETING, BUT YOU DON'T REMEMBER THE ISSUE BEING
28 DISCUSSED THEN?

1 A. NO, I DON'T RECALL SAYING THAT.

2 Q. DOES THAT STATEMENT ACCURATELY REFLECT YOUR
3 RECOLLECTION ABOUT THAT MATTER?

4 A. NO. I BELIEVE THE TEAMSTERS ISSUE DID COME UP BACK
5 THEN.

6 Q. WHAT DO YOU RECALL BEING SAID ABOUT THE TEAMSTER
7 ISSUE?

8 A. UH -- AS I RECALL, IT SORT OF REVOLVED AROUND THE
9 CONCEPT, AGAIN, OF LABOR PEACE THAT WE TALKED ABOUT BEFORE.
10 AND CONCERNS FROM THE TEAMSTERS THAT THEY HAVE TERRITORIAL
11 RIGHTS TO THE MRF EMPLOYEES THAT WERE LEAVING WASTE
12 MANAGEMENT AND COMING TO WORK FOR CWS, AND CWS'S ASSERTION
13 THAT ILWU HAD TERRITORIAL RIGHTS, AND THAT WAS SORT OF THE
14 MAIN DISCUSSION POINT AS I RECALL.

15 Q. WAS ANYONE FROM THE TEAMSTERS IN ATTENDANCE AT THIS
16 MEETING WITH THE MAYOR?

17 A. I THINK THAT BOB MORALES WAS IN ATTENDANCE.

18 Q. HOW CERTAIN OR UNCERTAIN ARE YOU ABOUT THAT?

19 A. YOU KNOW, I HAVE TO TELL YOU I'M PROBABLY 50-50 ON
20 THAT. I SEEM TO RECALL THAT HE WAS THERE, BUT I COULDN'T
21 SAY FOR SURE.

22 Q. WHAT DID THE MAYOR SAY ABOUT THIS ISSUE?

23 A. I BELIEVE, I CAN'T TELL YOU SPECIFICALLY WHAT HE
24 SAID, BUT THE MESSAGE I LEFT WITH WAS THAT IF DAVID DUONG'S
25 CONCERN AND NORCAL'S CONCERN WAS THE ADDITIONAL EXPENSE
26 RELATED TO THE TEAMSTERS CONTRACT VERSUS THE ILWU CONTRACT
27 THAT WAS IN THE BID, THAT IF, IF IN FACT THE TEAMSTERS DID
28 ORGANIZE AND WE COULD SHOW THAT DIFFERENCE, THAT HE WOULD,

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1 YOU KNOW, LOOK AT THAT DIFFERENCE OR HAVE HIS STAFF LOOK AT
2 THAT DIFFERENCE AND BE SUPPORTIVE OF US GOING TO THE COUNCIL
3 TO ASK FOR THAT MONEY, THAT DIFFERENCE, WHATEVER THE
4 DIFFERENCE WAS.

5 Q. BE SUPPORTIVE OR WOULD SUPPORT?

6 A. I COULDN'T TELL YOU WHICH WORDS WERE USED
7 SPECIFICALLY.

8 Q. DID YOU FEEL THAT, BASED ON WHAT THE MAYOR SAID,
9 THAT GETTING EXTRA MONEY FROM THE CITY OF SAN JOSE TO PAY
10 THE ADDITIONAL LABOR COSTS OF CWS USING TEAMSTERS WAS PRETTY
11 MUCH A DONE DEAL AT THAT POINT?

12 A. I DID NOT FEEL THAT WAY, NO.

13 Q. YET THE FOLLOWING MONDAY, NORCAL OBLIGATED ITSELF
14 TO PAY AN ESTIMATED \$2,000,000 A YEAR OVER FIVE YEARS FOR
15 THE ADDITIONAL COST OF CWS SWITCHING TO THE TEAMSTERS,

16 CORRECT?

17 A. YES, THEY DID.

18 Q. WELL, DID YOU EVER TELL MIKE SANGIACOMO, THIS IS
19 CRAZY, WHY ARE WE UNDERTAKING A \$10 MILLION LIABILITY WHEN
20 WE HAVE ABSOLUTELY NO ASSURANCES FROM THE CITY WE'RE GOING
21 TO GET REIMBURSED FOR THIS?

22 A. I DON'T BELIEVE I USED THOSE WORDS, BUT I DID
23 EXPRESS MY CONCERN OVER THE AGREEMENT.

24 Q. WHAT DID YOU TELL MIKE SANGIACOMO?

25 A. I THINK I TOLD HIM, UH -- THAT SOMETHING TO THE
26 EFFECT THAT I FELT IT WAS ALMOST LIKE A BLANK CHECK, AND
27 THAT WE WERE SIGNING A DOCUMENT WITHOUT REALLY KNOWING WHAT
28 IT COULD ULTIMATELY BE, AND I DIDN'T THINK IT WAS A GOOD

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1 IDEA.

2 Q. THAT'S WHAT YOU TOLD HIM?

3 A. SOMETHING ALONG THOSE LINES.

4 Q. IN OTHER WORDS, THE AMOUNT OF REIMBURSEMENT TO CWS
5 WAS UNLIMITED, NOT SPECIFIED?

6 A. UNLIMITED, UNSPECIFIED, NOT REALLY KNOWN AT THE
7 TIME. AND AS I RECALL THE DOCUMENT, IT WAS SOMEWHAT

8 OPEN-ENDED BECAUSE IT DIDN'T -- IT WAS SOMEWHAT OPEN-ENDED
9 IN THAT IT DIDN'T REFER TO THE CURRENT CONTRACT THAT WAS IN
10 PLACE WITH THE TEAMSTERS. IT WAS OPEN ENOUGH FOR FUTURE
11 CONTRACTS, POTENTIALLY.

12 Q. IN OTHER WORDS, IT WASN'T JUST THE DELTA OR THE
13 DIFFERENCE FROM THE INITIAL 2002 WAGE AND BENEFIT STRUCTURE
14 OF THE TEAMSTERS AND ILWU, BUT COULD INCLUDE THE DIFFERENCE
15 GOING FORWARD WITH ANY NEW AGREEMENT?

16 A. THAT WAS MY UNDERSTANDING OF THAT AGREEMENT, YES.

17 Q. DID YOU TELL HIM ANYTHING ELSE?

18 A. NOT THAT I CAN RECALL SPECIFICALLY, NO.

19 Q. WELL, I LISTENED TO YOUR ANSWER VERY CAREFULLY, AND
20 I DIDN'T HEAR ONE WORD ABOUT PLUS WE HAVE NO ASSURANCE FROM
21 THE CITY THAT WE'RE GOING TO GET REIMBURSED FOR THE AMOUNT
22 WE'RE REIMBURSING CWS. DID YOU NOT TELL HIM THAT, TOO?

23 A. I MAY NOT HAVE SAID THAT TO HIM.

24 Q. DOESN'T THAT SUGGEST TO YOU YOU MUST HAVE HAD SOME
25 FEELING THAT GETTING THE EXTRA MONEY FROM THE CITY WAS NOT
26 GOING TO BE A PROBLEM?

27 A. NO, NOT NECESSARILY.

28 Q. YOU WERE THE POINT PERSON FOR NORCAL ON THIS

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1 PROPOSAL, CORRECT?

2 A. CORRECT.

3 Q. THIS WAS YOUR BABY, RIGHT?

4 A. TO A CERTAIN EXTENT, YES.

5 Q. THIS \$2 MILLION ESTIMATED CHARGE PER YEAR COULD
6 FLIP A \$1 MILLION A YEAR PROFIT INTO A \$1 MILLION A YEAR
7 LOSS, RIGHT?

8 A. THAT SOUNDS CORRECT, YES.

9 Q. YOU WEREN'T CONCERNED ABOUT THAT SITUATION WITH NO
10 ASSURANCE FROM THE MAYOR?

11 A. UH -- FIRST OF ALL, THE \$2 MILLION WASN'T A NUMBER
12 THAT I HAD NECESSARILY AT THE TIME. MY GREATER CONCERN WAS
13 ENTERING INTO A CONTRACT WITH A THIRD PARTY THAT I FELT WAS
14 UNLIMITED AND DIDN'T MAKE ANY SENSE. THAT WAS MY CONCERN,
15 AND I WAS SPEAKING TO THE PRESIDENT OF THE COMPANY WHO WAS
16 TWO LEVELS ABOVE ME. I DON'T THINK I WAS IN MUCH OF A
17 POSITION, QUITE FRANKLY, TO TAKE HIM ON SUPER SERIOUSLY, BUT
18 I DID VOICE MY CONCERNS.

19 Q. HOW DID MR. SANGIACOMO RESPOND AS FAR AS YOUR
20 CONCERNS?

21 A. HE, AS I RECALL, FELT THAT IT WAS A REASONABLE
22 AGREEMENT TO ENTER INTO, AND WE DIDN'T DEBATE IT VERY LONG,
23 TO BE PERFECTLY HONEST. I VOICED MY OPINION, AND THAT WAS
24 IT.

25 Q. DID YOU TELL TODD THOMPSON THAT DURING
26 CONVERSATIONS SUBSEQUENT TO THIS OCTOBER 6, 2000 MEETING

27 WITH THE MAYOR, MIKE SANGIACOMO HAD SUGGESTED TO YOU THAT
28 THE TEAMSTERS ISSUE WAS DISCUSSED DURING THE MEETING, BUT

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1 THAT YOU DIDN'T REMEMBER THE ISSUE BEING DISCUSSED THEN?

2 A. CAN YOU ASK THAT QUESTION AGAIN.

3 Q. SURE. LET'S SEE IF I CAN SHOW YOU MR. THOMPSON'S
4 MEMORANDUM.

5 A. EXCUSE ME, BUT DID YOU ALREADY ASK ME THAT
6 QUESTION?

7 Q. NO, IT'S SLIGHTLY DIFFERENT.

8 A. I THINK THAT'S WHERE I'M CONFUSED.

9 MR. FINKELSTEIN: LET'S TAKE A LOOK AT EXHIBIT
10 113.

11 BY MR. FINKELSTEIN:

12 Q. DID YOU TELL TODD THOMPSON THAT DURING SUBSEQUENT
13 CONVERSATIONS, MIKE HAD SUGGESTED TO YOU THAT THE TEAMSTERS
14 ISSUE WAS DISCUSSED DURING THAT MEETING, BUT YOU DON'T
15 REMEMBER THE ISSUE BEING DISCUSSED THEN AND THAT THAT
16 DOESN'T MEAN IT DIDN'T HAPPEN?

17 A. MY RECOLLECTION IS THAT THE TEAMSTERS DID COME UP
18 DURING THAT OCTOBER 6 MEETING.

19 Q. I UNDERSTAND THAT'S YOUR RECOLLECTION TODAY, BUT MY
20 QUESTION IS A LITTLE BIT DIFFERENT. MY QUESTION IS WHETHER
21 YOU MADE THE STATEMENT ATTRIBUTED TO YOU BY MR. THOMPSON IN
22 THIS JUNE OF 2003 INTERVIEW. THAT'S THE QUESTION.

23 A. I'M SORRY. I DON'T RECALL MAKING THAT STATEMENT.

24 Q. OKAY. DID YOU TELL TODD THOMPSON THAT YOU HAD NO
25 MEMORY OF DEALING DIRECTLY WITH DUONG ABOUT THE DIFFERENTIAL
26 PAY ISSUE?

27 A. UH -- I MAY HAVE TOLD HIM THAT, YES.

28 Q. IS THAT THE STATEMENT IN YOUR MEMORY TODAY AS WELL?

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1 A. YES.

2 Q. DID YOU TELL TODD THOMPSON THAT -- I'M SORRY. WE
3 HAVE BEEN GOING OVER AN HOUR; WE NEED TO GIVE THE REPORTER A
4 BREAK, SO WHY DON'T WE TAKE A FIVE-MINUTE RECESS.

5 THE FOREPERSON: LET ME REMIND YOU OF THE
6 CONFIDENTIALITY IN THIS CASE. YOU'RE NOT TO TALK TO ANYBODY
7 ABOUT WHAT YOU HEARD, WHAT YOU SAID OR SAW IN THIS
8 PROCEEDING, OTHER THAN YOUR ATTORNEY, SUBJECT TO THE SAME
9 CONFIDENTIALITY ADMONITION.

10 THE WITNESS: THANK YOU.

11 THE FOREPERSON: DOES ANYBODY HAVE ANY QUESTIONS?

12 THEN LET' S RECESS FOR FIVE MINUTES.

13 (A BRIEF RECESS WAS TAKEN.)

14 BY MR. FINKELSTEIN:

15 Q. MR. JONES, I' LL REMIND YOU THAT YOU' RE STILL UNDER
16 OATH. DO YOU UNDERSTAND THAT?

17 A. YES.

18 Q. GETTING BACK TO THIS JUNE 2003 INTERVIEW WITH TODD
19 THOMPSON, AT THAT TIME DID YOU TELL TODD THOMPSON THAT EARLY
20 ON OCTOBER 9 YOU HAD A MEETING WITH BOB MORALES, HEAD OF
21 SAN JOSE AND SAN FRANCISCO LOCAL TEAMSTERS UNION?

22 A. I MAY HAVE TOLD HIM THAT, YES.

23 Q. WAS THAT A TRUE STATEMENT?

24 A. UH -- WE HAD A MEETING. I DON' T RECALL THE EXACT
25 DATE, BUT WE HAD A MEETING IN THE DAYS JUST PRIOR TO THE
26 VOTE AS I RECALL.

27 Q. LET' S SEE IF WE CAN RECONSTRUCT THE DATE. WE KNOW
28 ON FRIDAY, OCTOBER 6, 2000, THERE WAS A MEETING WITH THE

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1 MAYOR, CORRECT?

2 A. CORRECT.

3 Q. WE KNOW THE FOLLOWING TUESDAY, OCTOBER 10, WAS THE

4 FIRST COUNCIL VOTE ON YOUR PROPOSAL, RIGHT?

5 A. CORRECT.

6 Q. DO YOU THINK YOU HAD A MEETING WITH MR. MORALES
7 OVER THE WEEKEND?

8 A. NO. I WOULD SAY IT WAS EITHER THE 9TH OR THE 10TH.
9 I JUST DON'T RECALL WHICH DAY IT WAS.

10 Q. WHERE DID THIS MEETING TAKE PLACE?

11 A. I BELIEVE THIS IS THE MEETING THAT TOOK PLACE, I
12 KNOW WE HAD A MEETING AT 840 NORTH FIRST, WHICH IS
13 RESTAURANT.

14 Q. RIGHT ACROSS FROM THE OLD CITY HALL?

15 A. CORRECT. BUT I BELIEVE WE ALSO HAD A MEETING AT
16 JOINT COUNCIL SEVEN, WHICH IS A UNION OFFICE COMPLEX UP IN
17 SAN FRANCISCO NEAR CANDLESTICK POINT.

18 Q. WHAT DID MR. MORALES SAY AT THIS MEETING?

19 A. AS I RECALL, HE WAS EXPRESSING AGAIN THAT HIS
20 BELIEF THEY HAD TERRITORIAL RIGHTS TO THE MRF EMPLOYEES, AND
21 LET ME KNOW THAT HE COULD OPPOSE THE AWARDING OF THE
22 CONTRACT TO NORCAL OR ANYBODY ELSE THAT WAS NOT USING
23 TEAMSTERS, ESSENTIALLY.

24 Q. WAS MR. MORALES UPSET THAT CWS HAD BEEN ORGANIZED
25 BY THE ILWU AND HADN'T SIGNED A MEMORANDUM OF UNDERSTANDING
26 WITH THE TEAMSTERS?

27 A. UH -- HE WAS UPSET IN GENERAL, YES.

28 Q. DID YOU TELL TODD THOMPSON THAT MR. MORALES SAID HE

1 WAS GOING TO BLOCK THE GRANT OF THE CONTRACT TO NORCAL IF
2 HIS CONCERNS WEREN' T SATISFIED?

3 A. I MAY HAVE TOLD HIM THAT, YES.

4 Q. WOULD THAT HAVE BEEN A TRUE STATEMENT?

5 A. IT'S AN ACCURATE REPRESENTATION OF WHAT BOB,
6 MR. MORALES SAID TO ME.

7 Q. AND DID YOU TELL TODD THOMPSON THAT YOU TOOK
8 MORALES' MESSAGE TO A MEETING AT NORCAL'S SAN FRANCISCO
9 OFFICES LATER THAT DAY?

10 A. I MAY HAVE TOLD HIM THAT, TOO, YES.

11 Q. WOULD THAT HAVE BEEN AN ACCURATE REFLECTION OF YOUR
12 MEMORY AT THAT TIME?

13 A. AS I RECALL, YES.

14 Q. DID YOU TELL TODD THOMPSON THAT THE ADDENDUM WHICH
15 NORCAL PROMISED TO REIMBURSE THE TEAMSTER/ILWU PAY
16 DIFFERENTIAL WAS A PRODUCT OF THIS MEETING AND WAS SIGNED
17 THAT DAY?

18 A. I MAY HAVE TOLD HIM THAT, YES.

19 Q. WAS THAT AN ACCURATE REFLECTION OF YOUR
20 RECOLLECTION AT THE TIME?

21 A. I BELIEVE IT IS, YES.

22 Q. DID YOU TELL TODD THOMPSON THAT YOU POINTED OUT TO
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23 MIKE, REFERRING TO MIKE SANGIACOMO, THAT THE ADDENDUM AS
24 WRITTEN WAS A QUOTE, BLANK CHECK, UNQUOTE, TO CWS?

25 A. YES.

26 Q. DID YOU ALSO TELL THOMPSON YOU RECOMMENDED THAT
27 NORCAL AGREE TO REIMBURSE ONLY THE DIFFERENCE BETWEEN
28 TEAMSTER WAGES UNDER THE THEN CURRENT TEAMSTERS' S CONTRACT,

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1 NOT TO REIMBURSE DIFFERENCES UNDER FUTURE, MORE GENEROUS
2 CONTRACTS?

3 A. I MAY HAVE TOLD HIM THAT ALSO.

4 Q. WOULD THAT HAVE BEEN AN ACCURATE REFLECTION OF YOUR
5 RECOLLECTION AT THAT TIME?

6 A. YEAH, THAT'S MY RECOLLECTION OF MY ARGUMENT AGAINST
7 SIGNING THAT AGREEMENT.

8 Q. DID YOU TELL TODD THOMPSON THAT YOU HAD A COPY OF
9 THE TEAMSTERS CONTRACT THEN IN EFFECT, BUT DUONG REFUSED TO
10 PROVIDE YOU WITH A COPY OF THE ILWU CONTRACT FROM CWS' S
11 OAKLAND FACILITY?

12 A. I'M NOT CERTAIN IF I TOLD HIM THAT DUONG REFUSED; I
13 BELIEVE I TOLD HIM THAT I DID NOT HAVE IT OR HADN'T SEEN IT
14 YET.

15 Q. WHERE DID YOU GET A COPY OF THE TEAMSTERS CONTRACT?

16 A. I BELIEVE THE TEAMSTERS GAVE THAT TO ME.

17 Q. MR. MORALES?

18 A. I BELIEVE SO, BUT IT COULD HAVE BEEN SOMEBODY IN
19 HIS OFFICE. BUT I BELIEVE IT WAS HIM.

20 Q. DID YOU TELL TODD THOMPSON THAT IN YOUR MEMORY,
21 THIS IS AS OF THE TIME OF THE 2003 INTERVIEW WITH TODD
22 THOMPSON, IT WAS SUBSEQUENT TO THAT MEETING THAT JOE GUERRA
23 SAID THAT THE CITY WOULD REIMBURSE THE DIFFERENTIAL,
24 ALTHOUGH IT'S POSSIBLE THE MAYOR HAD SAID THIS EARLIER?

25 DO YOU WANT TO SEE MR. THOMPSON'S MEMO?

26 A. OR IF YOU CAN REPEAT THE QUESTION FOR ME.

27 Q. LET ME REPEAT IT. DID YOU TELL TODD THOMPSON THAT
28 IN YOUR MEMORY IT WAS SUBSEQUENT TO THAT MEETING THAT JOE

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1 GUERRA SAID THAT THE CITY WOULD REIMBURSE THE DIFFERENTIAL,
2 ALTHOUGH IT'S POSSIBLE THAT THE MAYOR HAD SAID THIS EARLIER?

3 A. SUBSEQUENT TO WHICH MEETING?

4 Q. WELL, MR. THOMPSON'S NOTES DON'T MAKE THAT CLEAR,
5 SO WHY DON'T YOU JUST ASSUME SOME MEETING. WE HAVE ONLY
6 TALKED ABOUT TWO MEETINGS, ESSENTIALLY THE OCTOBER 6 MEETING
7 WITH THE MAYOR AND THE MEETING WITH THE TEAMSTERS, POSSIBLY

8 ON OCTOBER 9, BEFORE THE VOTE ON OCTOBER 10.

9 A. I DON'T RECALL MAKING THAT STATEMENT.

10 Q. OKAY. DID YOU TELL TODD THOMPSON THAT AT SOME
11 POINT MORALES BECAME AWARE OF THE CITY'S PROMISE?

12 A. I BELIEVE I DID TELL HIM THAT, YES.

13 Q. WHAT PROMISE WERE YOU REFERRING TO?

14 A. UH -- I CAN'T REMEMBER HOW I FOUND THIS INFORMATION
15 OUT, BUT IT CAME BACK TO ME THAT DURING SOME NEGOTIATIONS
16 BETWEEN THE TEAMSTERS AND CWS ON A NEW CONTRACT TO COVER THE
17 MRF WORKERS THAT AT SOME POINT BOB HAD SAID TO DAVID, WHY
18 ARE YOU SO CONCERNED ABOUT THE COST OF THIS NEW CONTRACT
19 WHEN IT'S NOT YOUR MONEY? IT'S GOING TO BE REIMBURSED TO
20 YOU THROUGH NORCAL OR THE CITY, OR SOMETHING TO THAT EFFECT.

21 Q. WELL, ACCORDING TO MR. THOMPSON'S NOTES OF THIS
22 INTERVIEW WITH YOU, YOU REPORTED TO HIM THAT MORALES TOLD
23 DUONG THAT HE DIDN'T UNDERSTAND WHY DUONG WOULDN'T AGREE TO
24 A NEW TEAMSTERS CONTRACT BECAUSE IT WASN'T HIS MONEY; THE
25 CITY WAS GOING TO PAY CWS BACK. DID YOU MAKE THAT STATEMENT
26 TO MR. THOMPSON?

27 A. I'M NOT SURE IF I SAID IT IN THOSE EXACT WORDS.

28 Q. DID YOU SUGGEST TO HIM THAT MR. MORALES TOLD, YOU

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1 HAD LEARNED THAT MR. MORALES HAD TOLD MR. DUONG THAT THE
2 CITY WAS GOING TO REIMBURSE WHATEVER EXTRA COSTS CWS
3 INCURRED IN AGREEING TO A NEW TEAMSTER CONTRACT?

4 A. YEAH, I MAY HAVE TOLD HIM THAT AT THE TIME.

5 Q. WOULD THAT HAVE BEEN AN ACCURATE REFLECTION OF YOUR
6 RECOLLECTION AT THE TIME?

7 A. IT'S AN ACCURATE REFLECTION OF THE MESSAGE I GOT
8 RELATIVE TO WHAT HAPPENED DURING THOSE NEGOTIATIONS.

9 Q. WHO DID YOU GET THE MESSAGE FROM?

10 A. YOU KNOW, I DON'T KNOW IF IT CAME FROM DAVID OR ONE
11 OF HIS EMPLOYEES OR IF IT CAME FROM THE TEAMSTERS. I DON'T
12 RECALL HOW I GOT THAT INFORMATION.

13 Q. OKAY. NOW, AT SOME POINT DID JOHN NICOLETTI TAKE
14 OVER SOME OF YOUR RESPONSIBILITIES IN CONNECTION WITH THE
15 NORCAL PROPOSAL?

16 A. JOHN NICOLETTI WAS THE GENERAL MANAGER FOR NORCAL
17 OF SAN JOSE, SO HE REPORTED TO ME. HE MAY HAVE TAKEN OVER
18 SOME OF MY ROLE AFTER I LEFT, BUT NOT WHILE I WAS THERE.

19 Q. AT SOME POINT DID YOU BRIEF MR. NICOLETTI ON THE
20 BACKGROUND OF THE NORCAL PROPOSAL AND WHAT HE NEEDED TO STAY
21 ON TOP OF?

22 A. UH -- NO. MR. NICOLETTI'S ROLE PRIMARILY WAS
23 RUNNING THE OPERATION ON A DAY-TO-DAY BASIS, AND WORKING
24 WITH CITY STAFF ON MAKING SURE TO MEET ALL THE GOALS OF THE
25 CONTRACT, TAKING CARE OF CUSTOMERS, ET CETERA. SO HE WOULD

26 HAVE KNOWN ABOUT ANY POTENTIAL LABOR ISSUES IF IT WAS GOING
27 TO RELATE TO A SHUTDOWN, BUT HE WASN' T REALLY INVOLVED IN
28 THE NEGOTIATIONS AS I RECALL.

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1 Q. WHEN DID YOU LEAVE NORCAL AGAIN?

2 A. LATE FEBRUARY OF 2003.

3 Q. AND AS OF LATE FEBRUARY OF 2003, WAS THE ISSUE OF
4 WHETHER OR NOT THE CITY WAS GOING TO REIMBURSE NORCAL FOR
5 THE EXTRA LABOR COSTS THAT CWS WAS GOING TO INCUR BY USING
6 TEAMSTERS, HAD THAT BEEN RESOLVED?

7 A. NO, IT HAD NOT.

8 Q. WHEN YOU LEFT NORCAL IN 2003, DIDN' T YOU HAVE TO
9 FILL IN MR. NICOLETTI ON WHAT NEEDED TO BE DONE TO FOLLOW
10 THROUGH AND GET REIMBURSEMENT FROM THE CITY?

11 A. I DID NOT.

12 Q. YOU DID NOT?

13 A. I DID NOT.

14 Q. SO YOU NEVER TOLD JOHN NICOLETTI SOMEWHERE IN THE
15 COURSE OF NEGOTIATIONS THE CITY HAD PREFERRED THAT WE USE
16 TEAMSTERS, AND THAT NORCAL EXPLAINED THAT WAS NOT PART OF
17 THE FINANCIAL CONSIDERATION WHEN NORCAL PUT THE BID TOGETHER
18 AND THAT NORCAL WOULD HAVE TO BE REIMBURSED FOR THOSE

19 ADDITIONAL COSTS?

20 A. I DON'T RECALL MAKING THAT STATEMENT EXACTLY, BUT
21 I'M CERTAIN THAT HE WAS AWARE OF THE SITUATION BECAUSE THERE
22 WAS A POTENTIAL FOR LABOR DISRUPTION AT THE FACILITY THAT HE
23 WAS USING EVERY DAY, AND I'M SURE I BRIEFED HIM ON WHY THAT
24 MAY OCCUR. BUT I DID NOT HAND THE BATON TO HIM, SO TO
25 SPEAK.

26 (INTERRUPTION BY THE COURT REPORTER.)

27 THE WITNESS: I'M SORRY. I DID NOT HAND OFF THAT
28 JOB RESPONSIBILITY TO NEGOTIATE THIS AFTER I LEFT; THAT WAS

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1 NOT PART OF MY EXIT.

2 Q. WELL, YOU SAID THERE WAS A POTENTIAL FOR LABOR
3 DISRUPTION; IS THAT WHAT YOU SAID?

4 A. WE WERE CONCERNED THERE WAS A POTENTIAL FOR LABOR
5 DISRUPTION AT CWS AS THEY WERE NEGOTIATING THE TEAMSTER
6 CONTRACT.

7 Q. WHAT ABOUT THE POTENTIAL FOR FINANCIAL DISRUPTION
8 IF NORCAL DIDN'T GET REIMBURSED FROM THE CITY?

9 A. THAT WAS NOT ONE OF OUR CONVERSATIONS.

10 Q. THAT WAS A CONCERN OF YOURS?

11 A. CERTAINLY.

12 Q. SO WHO DID YOU THINK WAS GOING TO FOLLOW THROUGH
13 AND SEEK REIMBURSEMENT FROM THE CITY AFTER YOU LEFT NORCAL?

14 A. THE MAJORITY OF THAT WORK WAS ACTUALLY BEING DONE
15 THROUGH OUR CORPORATE OFFICE AT THE TIME.

16 Q. LET ME ASK YOU THIS: OPERATIONS COMMENCED ON JULY
17 1, 2002 IN SAN JOSE, RIGHT?

18 A. CORRECT.

19 Q. WHAT WAS YOUR RESPONSIBILITY AFTER THAT OCCURRED?

20 A. MY PRIMARY RESPONSIBILITY AFTER JULY 1, 2002 WAS TO
21 ASSIST IN HELPING ENSURE THAT THERE WAS A SMOOTH TRANSITION.
22 WE HAD 150,000 VERY LARGE CONTAINERS WE HAD TO DELIVER, WE
23 HAD 40, 50 TRUCKS WE HAD TO MAKE SURE GOT OUT EVERY DAY,
24 DRIVERS TO TRAIN, ET CETERA. THERE WERE MANY MOVING PARTS.
25 I WAS THERE ESSENTIALLY ON SITE AT THE NEW FACILITY.

26 Q. TO WORK ON THE TRANSITION?

27 A. EVERY DAY WORKING ON THAT TRANSITION FOR ABOUT A
28 MONTH OR SO; THEN I FELL BACK INTO MY MORE NORMAL ROLE.

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1 Q. WHICH WAS WHAT?

2 A. RUNNING OR BEING IN CHARGE OF FACILITIES THAT
3 NORCAL OWNED AND/OR OPERATED IN SAN MATEO COUNTY, SANTA

4 CLARA COUNTY, AND IN LOS ANGELES.

5 Q. SO WHO WAS PURSUING REIMBURSEMENT FROM THE CITY ON
6 BEHALF OF NORCAL?

7 A. THE PRIMARY WORK THERE WAS BEING DONE, AGAIN, AT
8 OUR CORPORATE OFFICE. AND IT WAS, AS I RECALL, GOING
9 BETWEEN MARK LOMELE OR SOMEONE IN HIS OFFICE. HE WAS THE
10 CFO AT THE TIME. SOMEONE IN HIS OFFICE WAS WORKING WITH
11 DAVID'S PEOPLE AT CWS TO DETERMINE WHAT THAT COST
12 DIFFERENTIAL WAS.

13 Q. AND WHO WAS -- WHY WAS HE WORKING ON DETERMINING
14 THE COST DIFFERENTIAL?

15 A. BECAUSE I BELIEVE WE NEEDED TO COME FORWARD WITH
16 THE COST DIFFERENTIAL TO JOE GUERRA TO SHOW HIM WHAT THE
17 AMOUNT WAS BEFORE ANYTHING ELSE WOULD PROCEED.

18 Q. SO YOU DIDN'T ATTEND ANY MEETINGS WITH JOE GUERRA
19 CONCERNING REIMBURSEMENT TO NORCAL FOR THESE ADDITIONAL
20 LABOR COSTS?

21 A. OH, I MAY HAVE ATTENDED SOME MEETINGS, ABSOLUTELY.
22 I DON'T RECALL HOW MANY, BUT I THINK WE MAY HAVE MET TO TALK
23 ABOUT WHERE WE WERE AT IN THE PROCESS. I KNOW I ATTENDED
24 MEETINGS WHERE LABOR ISSUES IN GENERAL CAME UP RELATIVE TO
25 THE TEAMSTER CONTRACT OR NEGOTIATIONS FOR A CONTRACT.

26 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 8.

27 THIS IS AN E-MAIL OF SEPTEMBER 13, 2002 FROM CARL
28 MOSHER, AND IT TALKS ABOUT A MEETING THE DAY BEFORE, WHICH

1 WOULD BE SEPTEMBER 12, 2002, BETWEEN NORCAL, CWS, AND JOE
2 GUERRA TO DISCUSS LABOR ISSUES. DID YOU ATTEND THAT MEETING
3 ON BEHALF OF NORCAL?

4 A. I CAN'T SAY SPECIFICALLY IF IT WAS THAT DATE, BUT I
5 WAS IN ATTENDANCE AT A MEETING THAT JOE GUERRA HELD, AND IT
6 MAY NOT BE THIS ONE, WITH NORCAL, CWS, AND THE TEAMSTERS,
7 WHERE HE ESSENTIALLY HAD US IN THREE DIFFERENT ROOMS AND
8 ACTED AS INTERMEDIARY. I NEVER ACTUALLY WENT INTO A ROOM
9 WITH ANYBODY BUT NORCAL EMPLOYEES.

10 Q. THAT WAS A MEETING THAT TOOK PLACE IN '03 WHERE
11 MR. GUERRA ACTED AS SORT OF A MEDIATOR IN A LABOR DISPUTE?

12 A. YEAH, I WOULD SAY LATE '02, EARLY '03.

13 Q. I'M TALKING ABOUT A DIFFERENT TIME HERE.

14 A. OKAY.

15 Q. DID YOU ATTEND THE MEETING THAT'S REFERRED TO IN
16 THIS SEPTEMBER 13 E-MAIL FROM CARL MOSHER? WHY DON'T YOU
17 TAKE A MOMENT AND READ IT.

18 A. OKAY.

19 Q. MY QUESTION IS, THIS IS A SEPTEMBER 13, 2002 E-MAIL
20 FROM CARL MOSHER, THE ESD DIRECTOR, TO THE CITY MANAGER
21 RECOUNTING A MEETING THAT HAD APPARENTLY TAKEN PLACE THE DAY

22 BEFORE, SEPTEMBER 12, 2002, WITH JOE GUERRA, NORCAL, AND
23 CWS, TO DISCUSS LABOR ISSUES AND REIMBURSEMENT. DID YOU
24 ATTEND THAT MEETING?

25 A. I MAY HAVE ATTENDED THAT MEETING.

26 Q. OKAY. WHO ELSE FROM NORCAL ATTENDED THAT MEETING?

27 A. I'M NOT CERTAIN.

28 Q. WERE YOU THE SPOKESPERSON FOR NORCAL AT THAT

SUE HERFURTH, CSR #9645

2076

1 MEETING?

2 A. I'M NOT CERTAIN.

3 Q. DID NORCAL CLAIM AT THAT MEETING THAT THE MAYOR'S
4 OFFICE LAST FALL, WHICH MAY BE AN ERROR IN TERMS OF THE
5 YEARS, COMMITTED TO MAKE GOOD THE ADDITIONAL MONEY TO USE
6 TEAMSTERS INSTEAD OF LONGSHOREMEN?

7 A. NOT -- NO, I DON'T THINK SO, NOT THAT I REMEMBER.

8 Q. DID YOU -- MR. MOSHER WASN'T AT THAT MEETING,
9 RIGHT?

10 A. I'M NOT CERTAIN WHAT MEETING THIS IS REFERRING TO.
11 I'M STRUGGLING WITH THAT.

12 Q. SO IF MR. MOSHER TESTIFIED YOU'RE THE PERSON WHO
13 TOLD HIM ABOUT THIS MEETING THE DAY BEFORE, WOULD HE BE IN
14 ERROR ABOUT THAT?

15 A. I'M NOT SAYING HE WOULD BE IN ERROR, I'M SAYING I
16 DON'T RECALL THAT MEETING SPECIFICALLY.

17 Q. THIS WAS NOT A MEETING ABOUT DAY-TO-DAY OPERATIONS,
18 RIGHT, AS THE WAY IT'S DESCRIBED IN THIS E-MAIL?

19 A. AS DESCRIBED IN THE E-MAIL, I WOULD SAY NO.

20 Q. THIS IS A MEETING ABOUT LABOR ISSUES AND SEEKING
21 REIMBURSEMENT FROM THE CITY, RIGHT?

22 A. THAT SEEMS TO BE WHAT THE E-MAIL INDICATES, YES.

23 Q. THIS IS A MEETING YOU THINK YOU ATTENDED?

24 A. I MAY HAVE ATTENDED, YES.

25 Q. DID MR. NICOLETTI ATTEND THIS MEETING, TOO?

26 A. I DON'T KNOW.

27 Q. DO YOU RECALL HAVING A LUNCH MEETING WITH JOHN
28 NICOLETTI AT THE SAN JOSE MUNICIPAL GOLF COURSE?

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2077

1 A. POSSIBLE.

2 Q. WASN'T IT AT THAT MEETING THAT YOU FILLED BILL
3 JONES IN ON THE BACKGROUND OF THE PROPOSAL AND THE FACT THAT
4 THE MAYOR'S OFFICE HAD ASKED NORCAL TO GET CWS TO SWITCH TO
5 TEAMSTERS AND HAD COMMITTED TO GET REIMBURSEMENT FROM THE
6 CITY FOR THE EXTRA COST?

7 A. NOT THAT I RECALL.

8 Q. ARE YOU SAYING IT DIDN' T HAPPEN, OR YOU JUST DON' T
9 REMEMBER?

10 A. I DON' T RECALL THAT.

11 Q. WHICH MEANS IT COULD HAVE HAPPENED AND YOU DON' T
12 REMEMBER IT, OR ARE YOU SAYING TO YOUR RECOLLECTION IT
13 DIDN' T HAPPEN?

14 A. IT COULD HAVE HAPPENED; I' M CERTAIN AT SOME POINT I
15 DID FILL HIM IN ON SOME OF THE DETAILS.

16 Q. WHAT DID YOU TELL HIM?

17 A. PROBABLY JUST THAT THERE WERE, AGAIN, RELATING TO
18 THE POSSIBILITY OF LABOR ISSUES THAT WOULD AFFECT HIS
19 OPERATIONS ULTIMATELY, THAT THERE WAS AN ISSUE OUT THERE,
20 AND THIS IS SORT OF WHAT THE ISSUE IS, AND JUST BE AWARE OF
21 IT.

22 Q. HOW DID YOU FRAME THE ISSUE FOR HIM?

23 A. I DON' T RECALL SPECIFICALLY HOW I FRAMED IT. I
24 IMAGINE THAT IN GENERAL I JUST DESCRIBED THE ISSUE OF
25 TEAMSTERS VS. ILWU, WHICH HE WAS ALREADY SOMEWHAT AWARE OF.
26 AND THEN SORT OF THE LABOR DIFFERENCE WAS AN ISSUE, HOW THAT
27 WAS GOING TO BE HANDLED.

28 Q. HOW DID YOU TELL HIM THAT WAS GOING TO BE HANDLED?

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1 A. I BELIEVE I TOLD HIM AT SOME POINT THAT NORCAL HAD
2 ENTERED INTO AN AGREEMENT WITH CWS TO COVER THOSE
3 DIFFERENCES.

4 Q. DID YOU TELL HIM ANYTHING ABOUT ANY EXPECTATION BY
5 NORCAL THAT THE CITY WOULD REIMBURSE THOSE DIFFERENCES?

6 A. I BELIEVE I TOLD HIM THAT WE WERE GOING TO ASK THE
7 CITY TO REIMBURSE THEM.

8 Q. DID YOU SUGGEST TO HIM THIS WAS SORT OF A WIDE OPEN
9 PROPOSITION; THEY MAY, THEY MAY NOT, I HAVE NO IDEA?

10 A. I DON'T RECALL EXACTLY WHAT I SAID. I'M CERTAIN I
11 WOULDN'T HAVE TOLD HIM IT WAS A 100 PERCENT DONE DEAL,
12 BECAUSE IT WASN'T IN MY MIND.

13 Q. WAS IT A 75 PERCENT DONE DEAL?

14 A. I WOULDN'T LAY ODDS ON WHAT IT WAS, BUT IN MY MIND
15 IT WAS NOT A DONE DEAL.

16 Q. IN YOUR EXPERIENCE WITH NORCAL, IS THIS A COMPANY
17 THAT SORT OF ACTS IN IRRATIONAL, BIZARRE MANNERS IN THE
18 CONDUCT OF ITS BUSINESS?

19 A. I WOULDN'T SAY THAT, NO.

20 Q. WELL, WOULDN'T IT BE AN IRRATIONAL AN BIZARRE ACT
21 FOR A COMPANY LIKE NORCAL TO OBLIGATE ITSELF TO AN ESTIMATED
22 \$2 MILLION A YEAR LIABILITY, WHICH WE NOW KNOW WAS \$11.25
23 MILLION, WITH ABSOLUTELY NO ASSURANCE THAT THE CITY WAS
24 GOING TO REIMBURSE THAT EXPENSE?

25 A. I CAN'T SPEAK TO WHY THAT CONTRACT WAS SIGNED, WHY

26 THAT AMENDMENT WAS SIGNED. I DIDN'T SIGN IT; IT WASN'T MY
27 CALL.

28 Q. AND TO YOUR KNOWLEDGE, NO ASSURANCES WERE GIVEN BY

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2079

1 THE MAYOR'S OFFICE TO NORCAL THAT THOSE ADDITIONAL EXPENSES
2 WOULD BE REIMBURSED BY THE CITY; IS THAT YOUR TESTIMONY?

3 A. THAT IS MY TESTIMONY, YES.

4 MR. FINKELSTEIN: LET ME SEE IF THE JURORS HAVE
5 ANY QUESTIONS.

6 BY MR. FINKELSTEIN:

7 Q. WHY IS IT YOU LEFT NORCAL IN FEBRUARY OF '03?

8 A. I WAS RECRUITED BY A LARGER COMPANY THAT OFFERED ME
9 A POSITION WITH MORE RESPONSIBILITY.

10 Q. AND THE NAME OF THAT COMPANY AGAIN WAS?

11 A. ALLIED WASTE INDUSTRIES.

12 Q. WERE YOU CONCERNED ABOUT NORCAL GETTING REIMBURSED
13 FOR THIS SWITCH FROM LONGSHOREMEN TO TEAMSTERS?

14 A. UH -- CERTAINLY, TO A CERTAIN EXTENT. I WASN'T
15 CERTAIN THAT NORCAL WOULD EVER SEE THAT MONEY.

16 Q. IF THIS, IF NORCAL HAD NOT GOTTEN REIMBURSED AND
17 THIS CONTRACT HAD GONE FROM \$1 MILLION A YEAR POSITIVE TO \$1

18 MILLION A YEAR NEGATIVE, WOULD YOU FEEL THAT WOULD REFLECT
19 POORLY ON YOUR RESUME?

20 A. YOU KNOW, THAT WAS NOT THE REASON THAT I LEFT, BUT
21 I WILL TELL YOU THAT I WOULDN'T HAVE BEEN PROUD OF IT.

22 Q. WHEN THE OCTOBER 9 ADDENDUM BETWEEN NORCAL AND CWS
23 WAS -- DID YOU HAVE ANY ESTIMATE OF WHAT THE DIFFERENTIAL
24 COSTS WOULD BE FROM LONGSHOREMEN TO TEAMSTERS?

25 A. NOT THAT I RECALL, NO.

26 Q. NOT EVEN A BALLPARK NUMBER?

27 A. NO, BECAUSE I DON'T THINK AT THAT POINT I HAD EVEN
28 SEEN THE LONGSHOREMEN AGREEMENT TO KNOW WHAT ANY OF THE

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2080

1 NUMBERS WERE AS I RECALL.

2 Q. YOU SAID THERE WAS A MEETING AT THE, MAY HAVE BEEN
3 A MEETING WITH BOB MORALES SHORTLY BEFORE THE OCTOBER 10
4 COUNCIL VOTE AT THE JOINT COUNCIL FACILITY. DO YOU RECALL
5 THAT?

6 A. IT WAS EITHER THERE OR AT 840. I DON'T REMEMBER
7 WHICH ONE IT WAS.

8 Q. WHO ALL WAS PRESENT AT THIS MEETING, WHETHER IT WAS
9 AT 840 OR THE JOINT COUNCIL SEVEN OFFICE?

10 A. THE MEETING I REMEMBER MOST VIVIDLY WAS AMY DEAN,
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11 WHO AT THE TIME, I MAY HAVE THE TITLE WRONG, BUT I BELIEVE
12 SHE WAS THE PRESIDENT OF THE SOUTH BAY LABOR COUNCIL.

13 BOB --

14 Q. MR. MORALES?

15 A. MR. MORALES WAS THERE, I WAS THERE, I BELIEVE ED
16 MCGOVERN WAS THERE.

17 Q. WHO IS ED MCGOVERN?

18 A. A CONSULTANT WE HIRED AT NORCAL TO ASSIST WITH THIS
19 PROCESS. THERE WAS AN ATTORNEY THERE WHOSE NAME I DON'T
20 RECALL. HE WAS EITHER A TEAMSTER ATTORNEY OR A LABOR
21 COUNCIL ATTORNEY, ONE OF THE TWO.

22 Q. DO YOU REMEMBER HIS NAME?

23 A. I DON'T. TALL GENTLEMAN WITH A BRITISH OR
24 AUSTRALIAN ACCENT. DIDN'T SAY A LOT.

25 Q. MR. ABSALOM?

26 A. POSSIBLY, I DON'T KNOW. THOSE ARE THE ONLY FOLKS I
27 REMEMBER BEING THERE NOW.

28 Q. AND WHAT SPECIFICALLY WAS MR. MCGOVERN ASKED TO DO

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2081

1 FOR NORCAL?

2 A. HE WAS A POLITICAL CONSULTANT, AND HIS TASK, WE

3 BROUGHT HIM IN EARLY ON IN THE BID PROCESS, WAS TO SORT OF
4 HELP US UNDERSTAND THE POLITICAL LANDSCAPE, OR SORT OF THE
5 COMMUNITY LANDSCAPE OF SAN JOSE.

6 Q. AND HOW WAS IT THAT HE WAS AT THIS MEETING?

7 A. HE WAS, HE KNEW AMY DEAN, I DID NOT, SO I ASKED HIM
8 TO ATTEND AS SORT OF A FRIENDLY FACE.

9 MR. FINKELSTEIN: ANY OTHER QUESTIONS? THANK
10 YOU.

11 BY MR FINKELSTEIN:

12 Q. YOU TOLD US ABOUT THIS GOLF GAME WITH THE MAYOR IN
13 APPROXIMATELY MARCH OF 2000 THAT WAS CONNECTED WITH THE
14 CRIME STOPPERS FUND RAISER; DO YOU RECALL THAT?

15 A. YES.

16 Q. DO YOU RECALL WHAT THE AMOUNT OF THE LEVEL OF
17 CONTRIBUTION WAS, HAD TO BE IN ORDER TO PLAY GOLF WITH THE
18 MAYOR?

19 A. I BELIEVE IT WAS \$4,000. AND FOR THAT YOU HAD TWO
20 PEOPLE THAT YOU COULD BRING IN TO THE MAYOR'S FOURSOME, AND
21 I BELIEVE YOU GOT YOUR NAME ON A VERY LARGE BANNER AT THE
22 FIRST TEE, AND THERE WERE A FEW OTHER ANCI LLARY ITEMS THAT
23 WOULD GO ALONG WITH IT.

24 Q. AT SOME POINT DID YOU BECOME AWARE OF THE AMOUNT OF
25 DIFFERENTIAL BETWEEN THE TEAMSTERS AND THE LONGSHOREMEN?

26 A. I THINK THE LAST TIME I HEARD IT WAS SOMETHING
27 AROUND \$2 MILLION A YEAR. THAT IS THE LAST NUMBER I HEARD.

28 Q. WERE YOU SURPRISED AT THE SIZE OF THAT NUMBER?

1 A. YOU KNOW, MAYBE SURPRISE WOULD BE A GOOD WORD TO
2 DESCRIBE IT. I REALLY HAD NO IDEA WHAT IT WOULD EVEN BE, SO
3 I THOUGHT IT WAS A LARGE NUMBER, CERTAINLY.

4 Q. SO LET ME JUST TRY TO ASK YOU THIS ONE LAST TIME
5 ABOUT THE OCTOBER 6, 2000 MEETING WITH THE MAYOR. TO YOUR
6 RECOLLECTION, DID THE MAYOR EVER SPECIFICALLY REQUEST OR
7 IMPLY THAT MRF WORKERS USED BY CWS BE REPRESENTED BY
8 TEAMSTERS?

9 A. NOT THAT I RECALL.

10 Q. OKAY. AND AS YOU THINK BACK ON THAT MEETING, IS IT
11 POSSIBLE THAT THERE WAS SOME OCCASION AT THE BEGINNING OR AT
12 THE END OF THE MEETING WHEN YOU WERE NOT PRIVY TO WHAT THE
13 MAYOR MIGHT HAVE SAID TO MR. SANGIACOMO?

14 A. IT'S POSSIBLE, YES.

15 MR. FINKELSTEIN: ANY OTHER QUESTIONS? OH, WHAT
16 ABOUT MR. GUERRA, DID MR. GUERRA EVER ACKNOWLEDGE TO YOU
17 THAT THE MAYOR HAD REQUIRED CWS TO SWITCH TO THE TEAMSTERS?

18 A. NOT THAT I RECALL, NO.

19 Q. DID MR. GUERRA EVER ACKNOWLEDGE TO YOU THAT THE
20 CITY HAD MADE SOME KIND OF COMMITMENT TO REIMBURSE NORCAL
21 FOR THE ADDITIONAL COST OF USING TEAMSTERS?

22 A. NO, NOT THAT I CAN RECALL.

23 MR. FINKELSTEIN: THANK YOU VERY MUCH. YOU'RE
24 FREE TO GO, BUT YOU'RE NOT EXCUSED BECAUSE THE INVESTIGATION
25 IS STILL ONGOING. AND IN THE EVENT WE HAVE ADDITIONAL
26 QUESTIONS, WHICH AT THIS POINT I DON'T THINK IS LIKELY, BUT
27 IF THAT HAPPENS, WE'LL LET YOU KNOW WHEN YOUR ATTENDANCE IS
28 REQUIRED.

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2083

1 THE FOREPERSON WILL REMIND YOU OF THE
2 ADMONITION.

3 THE WITNESS: THANK YOU.

4 THE FOREPERSON: AGAIN, ANYTHING THAT YOU HEARD,
5 SAID, OR SAW IN THE PROCEEDINGS TODAY ARE NOT TO BE SHARED
6 WITH ANYBODY EXCEPT YOUR ATTORNEY.

7 THE WITNESS: THANK YOU. I UNDERSTAND.

8 MR. FINKELSTEIN: THANK YOU VERY MUCH.

9 THE WITNESS: THANK YOU.

10 MR. FINKELSTEIN: SO LADIES AND GENTLEMEN, WE HAVE
11 NO MORE WITNESSES TODAY. WE DO HAVE A WITNESS FOR NEXT
12 TUESDAY MORNING AT 10:00 A.M., SO WE WON'T BE IN SESSION ON
13 THIS CASE THIS AFTERNOON OR ON MONDAY ON THIS CASE. WE

14 EXPECT TO BE IN SESSION TUESDAY MORNING, PROBABLY WITH OUR
15 LAST WITNESS, AND THEN WE WILL PROBABLY NEED SOME TIME AT
16 THE DISTRICT ATTORNEY'S OFFICE TO CONSIDER THE EVIDENCE AND
17 WHAT OUR RECOMMENDATIONS MAY BE IN THIS CASE, AND THEN WE
18 WOULD LIKE TO MEET BACK WITH YOU THE FOLLOWING TUESDAY TO
19 DISCUSS THE CASE FURTHER.

20 THE FOREPERSON: I THINK THAT'S CONSISTENT WITH
21 THE SCHEDULE WE FORWARDED TO YOU. I KNOW OF NO CHANGES TO
22 THAT.

23 MR. FINKELSTEIN: RIGHT. I HAVE A SCHEDULE THAT'S
24 BEEN E-MAILED AROUND IN TERMS OF AVAILABILITY. SO WE'LL
25 RECESS THIS MORNING. WE'LL RESUME ON MAY 16 AT 10:00 A.M.,
26 AND I'M NOT SURE HOW LONG THAT WILL TAKE. AND AFTER THAT,
27 BARRING ANY ADDITIONAL WITNESSES, WE'LL RESUME ON MAY 23 TO
28 DISCUSS WHERE WE ARE AND HOW WE SHOULD PROCEED.

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2084

1 THE FOREPERSON: AT 10:00 A.M.?

2 MR. FINKELSTEIN: AT 10:00 A.M.

3 THANK YOU VERY MUCH. HAVE A NICE WEEKEND,
4 EVERYONE.

5 (COURT WAS ADJOURNED FOR THE DAY.)

6

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1 SAN JOSE, CALI FORNIA MAY
2 16, 2006.

3

4

PROCEEDINGS:

5

THE FOREPERSON: I'LL CALL THE GRAND JURY TO ORDER
6 AND TAKE ROLL.

7

(ROLL WAS TAKEN BY THE FOREPERSON.)

8

MR. FINKELSTEIN: THANK YOU.

9

LADIES AND GENTLEMEN, OUR NEXT WITNESS IS GOING TO
10 BE DAVID VOSSBRINK, WHO WE UNDERSTAND IS MAYOR GONZALES'
11 COMMUNICATIONS DIRECTOR. IS THERE ANYONE ON THE JURY WHO
12 NEEDS TO DECLARE ANYTHING?

13

A JUROR: I KNEW HIM WHEN I WAS INVOLVED IN THE
14 LEADERSHIP OF SUNNYVALE, SUNNYVALE LIBRARY BOARD. HE WAS
15 THE SPOKESMAN FOR THE CITY AT THAT TIME.

16

MR. FINKELSTEIN: GIVEN THAT, DO YOU THINK THAT
17 WOULD IN ANY WAY PREVENT YOU FROM BEING COMPLETELY FAIR AND
18 IMPARTIAL?

19

A JUROR: NO, HE'S JUST A CASUAL ACQUAINTANCE.

20

MR. FINKELSTEIN: YOU CAN JUDGE HIS CREDIBILITY
21 USING THE SAME STANDARD AS YOU WOULD APPLY TO ANY OTHER
22 WITNESS?

23

A JUROR: YES.

24

DAVID VOSSBRINK,
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25 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
26 AS FOLLOWS:

27 THE WITNESS: I SWEAR.

28 //

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2086

1 //

2 EXAMINATION:

3 BY MR. FINKELSTEIN:

4 Q. WOULD YOU PLEASE STATE YOUR FULL LEGAL NAME FOR THE
5 REPORTER.

6 A. DAVID VOSSBRINK, MIDDLE NAME JOHN.

7 Q. CAN YOU SPELL YOUR LAST NAME FOR THE REPORTER.

8 A. V-O-S-S-B-R-I-N-K.

9 Q. THANK YOU, MR. VOSSBRINK. BEFORE STARTING THE
10 QUESTIONING, I HAVE TO READ YOU AN ADMONITION THAT I'M
11 READING TO A NUMBER OF WITNESSES, SO PLEASE LISTEN
12 CAREFULLY. THE GRAND JURY IS INVESTIGATING THE FOLLOWING
13 MATTERS:

14 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
15 APPROVED THE SELECTION OF NORCAL WASTE SYSTEMS OF SAN JOSE,
16 INC., ALSO KNOWN AS NORCAL, TO PROVIDE FOR THE COLLECTION OF

17 RESIDENTIAL WASTE AND RECYCLABLE MATERIALS.

18 WHAT SAN JOSE CITY OFFICIALS KNEW ABOUT INCREASED
19 COSTS THAT MIGHT ARISE FROM THE EMPLOYMENT OF TEAMSTERS TO
20 DO THE RECYCLING WORK FOR NORCAL' S SUBCONTRACTOR, CALI FORNIA
21 WASTE SOLUTIONS, INC. , OR CWS.

22 WHEN SAN JOSE CITY OFFICIALS FIRST LEARNED ABOUT
23 SUCH INCREASED COSTS.

24 WHY SAN JOSE CITY OFFICIALS GAVE SECRET ASSURANCES
25 TO NORCAL THAT ADDITIONAL COSTS ARISING FROM THE USE OF
26 TEAMSTERS BY CWS FOR THE SORTING OF RECYCLABLE MATERIALS
27 WHICH WERE NOT INCLUDED IN THE ORIGINAL AGREEMENT WITH
28 NORCAL WOULD NONETHELESS BE PAID FOR BY THE CITY OF

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2087

1 SAN JOSE.

2 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
3 APPROVED A RATE HIKE IN MAY 2003 TO PAY FOR THOSE ADDITIONAL
4 COSTS.

5 WHETHER SAN JOSE CITY OFFICIALS MISLED THE PUBLIC
6 ABOUT THE TRUE REASONS FOR THIS RATE HIKE.

7 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
8 APPROVED A CONTRACT AMENDMENT TO THE NORCAL AGREEMENT IN
9 2004 TO PAY FOR ADDITIONAL COSTS RELATED TO THE USE OF

10 TEAMSTERS FOR THE SORTING OF RECYCLABLE MATERIALS.

11 AND WHETHER ANYTHING WAS GIVEN OR PROMISED TO
12 SAN JOSE CITY OFFICIALS AS AN INDUCEMENT TO TAKE THESE
13 ACTIONS.

14 DO YOU HAVE ANY QUESTIONS ABOUT THAT?

15 THE WITNESS: NO, SIR.

16 MR. FINKELSTEIN: YOU ARE A SUBJECT OF THE GRAND
17 JURY'S INVESTIGATION. THAT SIMPLY MEANS YOU ARE A PERSON
18 WHOSE CONDUCT IS WITHIN THE SCOPE OF THIS INVESTIGATION.

19 YOU HAVE THE RIGHT TO REFUSE TO ANSWER ANY
20 QUESTION IF A TRUTHFUL ANSWER TO THE QUESTION WOULD TEND TO
21 INCRIMINATE YOU. ANYTHING THAT YOU DO OR SAY MAY BE USED
22 AGAINST YOU BY THE GRAND JURY OR IN A SUBSEQUENT LEGAL
23 PROCEEDING.

24 IF YOU HAVE RETAINED COUNSEL, THE GRAND JURY WILL
25 PERMIT TO YOU A REASONABLE OPPORTUNITY TO STEP OUTSIDE THE
26 GRAND JURY ROOM TO CONSULT COUNSEL IF YOU SO DESIRE.

27 DO YOU UNDERSTAND WHAT I JUST EXPLAINED TO YOU?

28 A. YES, SIR.

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2088

1 Q. HOW ARE YOU EMPLOYED, MR. VOSSBRINK?

2 A. I'M COMMUNICATIONS DIRECTOR FOR THE OFFICE OF
3 SAN JOSE MAYOR RON GONZALES.

4 Q. WHEN DID YOU FIRST START WORKING IN THAT POSITION?

5 A. I STARTED IN SEPTEMBER 1999.

6 Q. AND IS THAT AN APPOINTED POSITION?

7 A. IT IS AN APPOINTED POSITION BY THE MAYOR.

8 Q. WHERE DID YOU WORK BEFORE THAT?

9 A. MY PREVIOUS POSITION WAS COMMUNITY RELATIONS
10 OFFICER FOR THE CITY OF SUNNYVALE.

11 Q. WHAT WERE YOUR RESPONSIBILITIES AS COMMUNITY
12 RELATIONS OFFICER?

13 A. A GENERAL TERM WOULD BE PUBLIC RELATIONS OFFICER
14 REPRESENTING THE CITY, COMMUNITY TO THE NEWS MEDIA,
15 ASSISTING CITY STAFF, CITY MANAGER, AND CITY COUNSEL IN
16 PREPARATION OF COMMUNICATION MATERIALS OF ALL SORTS.

17 Q. CAN YOU BRIEFLY TELL US WHAT YOUR EDUCATIONAL
18 BACKGROUND IS?

19 A. BACHELOR IN HISTORY FROM STANFORD.

20 Q. AS COMMUNICATIONS DIRECTOR FOR THE OFFICE OF THE
21 MAYOR OF THE CITY OF SAN JOSE, WHAT ARE YOUR JOB
22 RESPONSIBILITIES?

23 A. THERE ARE SEVERAL. I AM THE MAYOR'S COMMUNICATIONS
24 DIRECTOR. IN THAT CAPACITY I PROVIDE PLANNING, GUIDANCE,
25 RECOMMENDATIONS REGARDING COMMUNICATIONS, STRATEGIES, AND
26 TACTICS. I AM THE MAYOR'S PRESS SECRETARY, AND I REPRESENT
27 THE MAYOR TO THE NEWS MEDIA, WORK WITH THE NEWS MEDIA TO

28 HAVE ACCESS TO THE MAYOR, ASSIST THE MAYOR IN DEVELOPING HIS

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2089

1 COMMENTS TO THE NEWS.

2 I AM ALSO A SENIOR ADVISER TO THE MAYOR IN HIS
3 OFFICE WITH OTHERS PROVIDING IDEAS, RECOMMENDATIONS,
4 FEEDBACK ON A VARIETY OF ISSUES. I'M ALSO EDITOR-IN-CHIEF,
5 IF YOU WILL, FOR MATERIALS COMING OUT OF THE MAYOR'S OFFICE.
6 NEWS RELEASES, SPEECHES, MEMORANDA, CORRESPONDENCE, AND THE
7 LIKE.

8 Q. DO I UNDERSTAND FROM YOUR LAST ANSWER THAT PART OF
9 YOUR JOB INVOLVES WORKING ON MEMOS THAT THE MAYOR PRODUCES
10 TO THE CITY COUNCIL?

11 A. THAT IS CORRECT.

12 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS GRAND JURY
13 EXHIBIT 47 IN THIS INVESTIGATION, WHICH IS A CERTIFIED COPY
14 OF A MEMORANDUM FROM MAYOR GONZALES AND VICE MAYOR FRANK
15 FISCALINI DATED APRIL 4, 2000. AND IF YOU LIKE, I CAN BRING
16 IT UP TO YOU SO YOU CAN LOOK AT IT FIRSTHAND. DO YOU
17 RECOGNIZE THIS MEMO?

18 A. I DO NOT.

19 Q. LET ME HAVE YOU TAKE A LOOK AT IT IN ITS ENTIRETY.
20 IT'S JUST TWO PAGES.

21 A. I DO NOT RECOGNIZE THIS.

22 Q. OKAY. NOW, AS YOU EXPLAINED YOUR WORK FOR THE
23 MAYOR, IT WOULD INCLUDE WORKING ON MEMOS SUCH AS THIS MEMO,
24 CORRECT?

25 A. YES.

26 Q. IS THERE SOME REASON WHY YOU'RE NOT ABLE TO
27 RECOGNIZE THE MEMO --

28 A. THERE ARE A VARIETY OF MEMOS THAT I MAY NOT SEE FOR

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2090

1 PURPOSES OF TIME. THIS IS FIVE YEARS AGO, SIX YEARS AGO. I
2 DON'T SPECIFICALLY REMEMBER THAT ONE WAY OR THE OTHER. IF I
3 DID SEE THAT AT THE TIME, I DO NOT REMEMBER IT, BUT I DO NOT
4 SEE 100 PERCENT OF THE DOCUMENTS THAT COME FROM THE MAYOR'S
5 OFFICE.

6 Q. DO YOU RECALL IN THE YEAR 2000 THE CITY OF SAN JOSE
7 WAS DEVELOPING A REQUEST FOR PROPOSALS IN CONNECTION WITH
8 THE RECYCLE PLUS SERVICES IT WAS SEEKING TO HAVE PROVIDED TO
9 IT?

10 A. YES, AND MAY I ALSO PUT SOME CONTEXT AROUND IT?
11 MOST OF MY KNOWLEDGE OF THAT PROCESS NOW COMES AS A RESULT
12 OF REVIEWING DOCUMENTS AND PREPARING MATERIALS LAST SUMMER,

13 AFTER THE GRAND JURY'S REPORT CAME OUT IN JUNE 2005.

14 Q. I UNDERSTAND THAT YOU WERE WORKING AS THE MAYOR'S
15 COMMUNICATIONS DIRECTOR IN THE YEAR 2000?

16 A. THIS IS CORRECT.

17 Q. THE PREPARATION OF THE CITY'S RECYCLE PLUS RFP
18 WOULD HAVE BEEN SOMETHING THAT WAS WORKED ON AT THE TIME
19 THAT YOU WERE THE MAYOR'S COMMUNICATIONS DIRECTOR?

20 A. THAT'S TRUE.

21 Q. CORRECT?

22 A. YES.

23 Q. DO YOU RECALL THAT THERE WERE COUNCIL SESSIONS HELD
24 TO DISCUSS WHAT THE CONTENT OF THE RFP SHOULD BE?

25 A. YES.

26 Q. AND YOU HAVE NO RECOLLECTION OF ASSISTING THE MAYOR
27 IN PREPARING ANY MEMOS THAT DISCUSSED WHAT THE CONTENT OF
28 THE RFP SHOULD OR SHOULD NOT BE?

SUE HERFURTH, CSR #9645

2091

1 A. FROM THAT TIME, NO.

2 Q. LET ME SHOW YOU NEXT WHAT'S BEEN MARKED AS GRAND
3 JURY EXHIBIT 14.

4 THIS IS AN OCTOBER 8 MEMORANDUM FROM MAYOR
5 GONZALES AND OTHERS. THE SUBJECT LINE READS, "SELECTION OF
Page 204

6 CONTRACTORS FOR RECYCLE PLUS." DID YOU WORK ON THIS
7 MEMORANDUM?

8 A. I DON'T HAVE A SPECIFIC RECOLLECTION OF WORKING ON
9 THAT MEMO.

10 Q. OKAY.

11 A. IF I COULD SEE THE WHOLE THING, IT MIGHT HELP.

12 Q. SURE.

13 A. I MAY HAVE, BUT I COULDN'T SAY 100 PERCENT.

14 Q. OKAY. LET ME SHOW YOU NEXT WHAT'S BEEN MARKED AS
15 GRAND JURY EXHIBIT 20 IN THIS PROCEEDING. THIS IS AN
16 OCTOBER 27, 2000 MEMORANDUM FROM CITY ATTORNEY RICHARD DOYLE
17 TO THE MAYOR AND CITY COUNCIL REGARDING RECYCLE PLUS LABOR
18 ISSUES. HAVE YOU SEEN THAT MEMORANDUM BEFORE?

19 A. I DON'T SPECIFICALLY RECALL SEEING IT, NO.

20 Q. DO YOU RECALL THAT, DURING THE SELECTION OF THE
21 HAULERS IN 2000, THERE WAS AN ISSUE ABOUT WHAT THE CITY
22 COULD OR COULD NOT DO REGARDING REQUIRING NEUTRALITY
23 AGREEMENTS FROM CONTRACTORS?

24 A. MY KNOWLEDGE OF THAT IS MOSTLY FROM REVIEWING
25 DOCUMENTS AND PREPARING MATERIALS IN THE LAST 12 MONTHS. I
26 DON'T SPECIFICALLY RECALL THAT DISCUSSION FROM THAT TIME.

27 Q. YOU HAVE NO RECOLLECTION OF ANY FIRST-HAND
28 KNOWLEDGE OF THAT ISSUE?

1 A. CORRECT.

2 Q. LET ME SHOW YOU A MORE RECENT DOCUMENT. LET ME
3 SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 99. THIS IS A
4 MEMORANDUM DATED SEPTEMBER 16, 2004, FROM MAYOR RON
5 GONZALES, VICE MAYOR DANDO, AND COUNCILMEMBER CHAVEZ. THE
6 SUBJECT LINE READS, "AMENDMENT TO THE AGREEMENT WITH NORCAL
7 FOR RECYCLE PLUS SERVICES."

8 DO YOU RECALL, BACK AT THE TIME OF THIS MEMO,
9 SEEING THIS MEMO?

10 A. YES, I DID WORK ON THAT.

11 Q. YOU DID?

12 A. YES.

13 Q. WHAT WORK DID YOU DO ON THIS MEMO?

14 A. USUALLY I WORK ON POLICY, MAKING SURE THE LANGUAGE
15 IS CLEAR, THAT IT'S ACCURATE; IF THERE ARE QUESTIONS ABOUT
16 THE INTENT OF THE DRAFT, WE GO BACK TO THE ORIGINAL AUTHOR
17 AND CLARIFY THAT SO THAT THE FINAL PRODUCT IS CLEAR ENOUGH
18 FOR ITS PURPOSE.

19 IN THIS CASE I RECALL THE DRAFT CAME FROM JOE
20 GUERRA, AND I DID MY EDITING TO MAKE SURE THAT THE DRAFT WAS
21 IN GOOD FORMAL CONDITION, IT WAS CLEAR.

22 Q. THE FIRST DRAFT OF THIS MEMORANDUM THAT YOU SAW
23 CAME FROM JOE GUERRA?

24 A. THAT'S MY RECOLLECTION.

25 Q. AND DO YOU RECALL WHAT CHANGES, IF ANY, YOU MADE TO
26 THE DRAFT?

27 A. NO.

28 Q. WHAT KINDS OF CHANGES?

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2093

1 A. THEY WOULD HAVE BEEN, GENERICALLY SPEAKING,
2 PROBABLY REARRANGING SENTENCES SO THAT THE WORDING MADE
3 SENSE, TO MAKE SURE THE GRAMMATICAL CONSTRUCTION WAS
4 ACCURATE, THAT THE POLICY ARGUMENT WAS PLACED IN AN
5 APPROPRIATE LOCATION IN THE MEMO SO IT WAS EASY TO READ. I
6 WOULD MAKE THOSE KINDS OF LANGUAGE AND STRUCTURAL CHANGES.

7 Q. DID YOU HAVE ANY QUESTIONS OF MR. GUERRA ABOUT ANY
8 OF THE CONTENT OF THE MEMO?

9 A. UH -- I MIGHT HAVE. I DON'T KNOW AT THIS POINT.

10 Q. DID YOU TALK TO THE MAYOR ABOUT THE CONTENT OF THIS
11 MEMO AT THE TIME IT WAS BEING PREPARED?

12 A. I DID NOT.

13 Q. UH -- WHO HAD FINAL APPROVAL OF THE CONTENT OF THIS
14 MEMO?

15 A. THE MAYOR USUALLY SIGNS OFF ON MEMOS THAT HE SIGNS,
16 OR HE WILL RETURN DOCUMENTS BACK TO FIX ERRORS OR TO SAY, I

17 WOULD RATHER SAY X INSTEAD OF Y. MOST OF THE TIME OUR GOAL
18 IS TO MAKE SURE HE HAS A DOCUMENT TO SIGN THAT IS READY FOR
19 SIGNATURE AND REPRESENTS THE POLICY POSITION THAT HIS OFFICE
20 HAS TALKED ABOUT TO THAT POINT.

21 Q. COULD I INTERRUPT YOU FOR A SECOND. I'M HAVING A
22 LITTLE DIFFICULTY HEARING YOUR ANSWERS. IF YOU COULD MOVE
23 THE MIKE OVER AND TRY TO SPEAK UP A LITTLE BIT, I WOULD
24 APPRECIATE THAT.

25 IN THIS CASE, REGARDING THE SEPTEMBER 16, 2004
26 MEMO, DID THE MAYOR HAVE FINAL APPROVAL ON THE CONTENT OF
27 THE MEMO?

28 A. I WOULD EXPECT SO. I WOULD ALSO BELIEVE REBECCA

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2094

1 DISHOTSKI, WHO IS THE MAYOR'S CHIEF OF STAFF, HAD A PART IN
2 REVIEWING, REVISING, OR EDITING THE MEMO BEFORE IT WAS READY
3 FOR SIGNATURE.

4 Q. ARE YOU FAMILIAR WITH THE MAYOR'S SIGNATURE?

5 A. YES.

6 Q. IS THAT THE MAYOR'S SIGNATURE ON THIS MEMO?

7 A. IT LOOKS LIKE IT TO ME.

8 Q. DO YOU RECALL ANY DISCUSSIONS WITH THE MAYOR, AT

9 THE TIME THAT THIS MEMO WAS BEING PUT TOGETHER, ABOUT THE
10 CONTENT OF THE MEMO?

11 A. WE MAY HAVE DISCUSSED IT IN THE MAYOR'S STAFF
12 MEETING. I DON'T KNOW THAT FOR A FACT AT THIS DISTANCE.

13 Q. YOU DON'T KNOW THAT FOR A FACT --

14 A. AT THIS DISTANCE.

15 Q. IF YOU CAN MOVE THE BASE OF THAT MICROPHONE
16 FORWARD --

17 A. SORRY ABOUT THAT. I'LL SPEAK UP LOUDER.

18 Q. YOU TOLD US THE FIRST DRAFT OF THE MEMO YOU RECALL
19 SEEING CAME FROM JOE GUERRA?

20 A. CORRECT.

21 Q. I ASSUME YOU MADE SOME CHANGES TO IT?

22 A. CORRECT.

23 Q. WHAT DID YOU DO WITH THE NEW DRAFT?

24 A. I WOULD HAVE SENT IT BACK TO JOE GUERRA.

25 Q. AND DO YOU RECALL WHAT THE NEXT STEP IN THE
26 PREPARATION OF THIS MEMO WAS?

27 A. WHAT WE USUALLY DO --

28 Q. LET ME STOP YOU. BECAUSE THIS IS A FORMAL

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2095

2 A COURT OF LAW.

3 I KNOW YOU'RE TRYING TO HELP US UNDERSTAND WHAT
4 HAPPENED, BUT LET ME EXPLAIN SOMETHING TO YOU. IF I ASK A
5 QUESTION, I'M ASKING FOR -- WHAT I'M ASKING FOR, UNLESS I
6 INDICATE OTHERWISE, IS WHAT YOU RECALL HAPPENING IN THE
7 PARTICULAR INSTANCE AS OPPOSED TO WHAT YOUR GENERAL CUSTOM,
8 HABIT, OR PROCEDURE MAY BE. I NOTICE NOW SEVERAL TIMES YOU
9 START ANSWERS TO QUESTIONS BY SAYING USUALLY THIS AND THAT.

10 SO IF YOU HAVE A RECOLLECTION, IT DOESN'T HAVE TO
11 BE PERFECT, AND YOU CAN QUALIFY THE EXTENT OF YOUR
12 RECOLLECTIONS WITH REGARD TO HOW CERTAIN OR UNCERTAIN YOU
13 ARE. BUT IF YOU HAVE SOME RECOLLECTION, YOUR OBLIGATION IS
14 TO ANSWER BASED ON YOUR RECOLLECTION, NOT BASED UPON WHAT
15 NORMALLY, TYPICALLY, OR USUALLY HAPPENS.

16 A. I UNDERSTAND.

17 Q. NOW I FORGOT MY QUESTION.

18 A. I HAVE THIS INVETERATE HABIT OF TRYING TO EXPLAIN
19 TO THE NEWS MEDIA, TO TRY AND EXPLAIN FULLER THE CONTEXT OF
20 WHAT THEY'RE ASKING ABOUT.

21 Q. I THINK I WAS ASKING ABOUT WHAT HAPPENED AFTER YOU
22 PREPARED THE REVISION TO THE MEMO YOU GOT FROM JOE GUERRA.

23 A. I DON'T HAVE A SPECIFIC RECOLLECTION, BUT I WOULD
24 HAVE EXPECTED TO SEND IT BACK TO JOE.

25 Q. DO YOU RECALL ON THIS, ANYTHING STAND OUT IN YOUR
26 MIND ABOUT THIS PARTICULAR MEMO AT THE TIME IT WAS BEING PUT
27 TOGETHER?

28 A. I DO RECALL THAT IT WAS AFTER THE MEMO WAS SIGNED

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2096

1 AND PUT OUT THAT THERE WAS AN ERROR THAT WAS IN THE MEMO.
2 IT REFERRED TO TIMING, ABOUT WHEN THE MAYOR'S OFFICE
3 UNDERSTOOD WHEN COSTS ASSOCIATED WITH THE CONTRACT WERE ON
4 THE TABLE.

5 Q. WHEN YOU SAY AN ERROR, DO YOU MEAN THAT WAS AFTER
6 THE GRAND JURY REPORT WAS RELEASED?

7 A. NO, THIS WAS BACK IN 2004. THERE WAS AN ERROR
8 ACTUALLY CALLED TO OUR ATTENTION BY DAVID YARNOLD FROM THE
9 MERCURY NEWS.

10 Q. OH, THIS WAS BETWEEN THE FIRST AND SECOND VOTE?

11 A. THIS WAS IN 2004.

12 Q. BETWEEN THE FIRST AND SECOND VOTE ON THE AMENDMENT?

13 A. CORRECT. IT WAS IN THE MONTH OF SEPTEMBER, AS I
14 RECALL IT. THERE WERE SEVERAL VOTES THERE. I DON'T
15 REMEMBER WHEN IT WAS AT THIS POINT.

16 Q. WELL, LET ME DIGRESS FOR A MOMENT. LET ME SHOW YOU
17 EXHIBIT 133. THIS IS AN EDITORIAL PUBLISHED BY THE MERCURY
18 ON OCTOBER 14, 2004. WAS IT AROUND THIS TIME THAT THE
19 MERCURY NEWS BROUGHT TO YOUR ATTENTION A DIFFERENCE IN THE

20 TIMING AS TO WHEN THE COSTS WERE KNOWN IN THE MAYOR'S
21 OFFICE?

22 A. IT WAS AROUND THAT TIME, ALTHOUGH I COULDN'T TELL
23 YOU NOW IF IT WAS OCTOBER 24 OR --

24 Q. NO, THAT'S OCTOBER 14.

25 A. IT WOULD BE IN THAT TIME FRAME, BUT I DON'T KNOW
26 EXACTLY WHEN.

27 Q. THAT WOULD HAVE BEEN AFTER THE INITIAL VOTE ON THE
28 AMENDMENT OF THE AGREEMENT, RIGHT?

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2097

1 A. I BELIEVE THAT'S CORRECT.

2 Q. NOW, YOU ALSO CHARACTERIZED THIS DIFFERENCE IN THE
3 TIMING AS TO WHEN THE COST WAS KNOWN AS AN ERROR, RIGHT?

4 A. CORRECT.

5 Q. AND WHAT INFORMATION THAT YOU HAVE THAT CAUSES YOU
6 TO HAVE AN OPINION THAT THIS WAS AN ERROR AS OPPOSED TO SOME
7 INTENTIONAL ACT ON THE PART OF THE MAYOR OR SOMEONE ELSE?

8 A. I RECALL BASED ON CONVERSATIONS IN THE MAYOR'S
9 OFFICE WITH JOE GUERRA AND ACKNOWLEDGING THAT THERE WAS AN
10 EDITING ERROR IN THE PROCESS OF DOING THE MEMO.

11 Q. WHAT DO YOU MEAN, ACKNOWLEDGING THAT THERE WAS A
12 EDITING ERROR?

13 A. THAT THE USE OF WORD BEFORE AND AFTER, AS I RECALL,
14 THE WORD BEING A PROBLEM. AND I HAVE WORKED WITH JOE GUERRA
15 FOR NOW SEVEN YEARS AND I'VE NOT SEEN HIM TO DO THINGS
16 DELIBERATELY TO MISLEAD PEOPLE.

17 Q. BUT THIS IS ALL IN YOUR OPINION AND SUPPOSITION?

18 A. THAT' S CORRECT.

19 Q. DID MR. GUERRA -- STRIKE THAT.

20 SO LET' S GO BACK TO THIS MEMORANDUM OF SEPTEMBER
21 16, 2004, WHICH RELATES TO THE COUNCIL MEETING ON SEPTEMBER
22 21, 2004, CORRECT?

23 A. CORRECT.

24 Q. WHICH WOULD HAVE BEEN THE FIRST VOTE BY THE COUNCIL
25 ON WHETHER OR NOT TO AMEND NORCAL' S AGREEMENT, CORRECT?

26 A. CORRECT.

27 Q. YOU TOLD US THAT PART OF YOUR JOB AS COMMUNICATIONS
28 DIRECTOR IS TO MAKE SURE THAT COMMUNICATIONS ORIGINATING

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2098

1 FROM THE MAYOR' S OFFICE ACCURATELY REFLECT THE MAYOR' S
2 POLICY ON VARIOUS ISSUES, RIGHT?

3 A. THAT IS CORRECT.

4 Q. SO IN THIS MEMO, THE MAYOR IS PROPOSING THAT THE

5 CITY OF SAN JOSE AMEND ITS AGREEMENT TO PAY SOME \$11 MILLION
6 MORE TO NORCAL AS A RESULT OF A CHANGE IN THE COLLECTIVE
7 BARGAINING AGREEMENT THAT CWS WENT THROUGH WITH THE
8 TEAMSTERS, CORRECT?

9 A. CORRECT.

10 Q. DID YOU HAVE ANY DISCUSSION WITH THE MAYOR OR
11 MR. GUERRA ABOUT THAT BEING INCONSISTENT WITH WHAT THE MAYOR
12 HAD SAID IN THAT APRIL 4 MEMO THAT I SHOWED YOU AT THE
13 BEGINNING OF THIS EXAMINATION ABOUT --

14 A. I DID NOT.

15 Q. YOU DID NOT. SO YOU HAD NO DISCUSSION WITH THE
16 MAYOR OR MR. GUERRA ABOUT POLICY ISSUES RELATING TO WHETHER
17 OR NOT THE CITY SHOULD AMEND ITS AGREEMENT TO PAY THE
18 ADDITIONAL COST OF A NEW COLLECTIVE BARGAINING AGREEMENT?

19 A. THAT IS CORRECT.

20 Q. DID YOU HAVE ANY DISCUSSION WITH THE MAYOR OR
21 MR. GUERRA ON ANY POLICY ISSUES INVOLVING WHAT THIS WOULD
22 MEAN TO THE INTEGRITY OF THE RFP PROCESS IF THAT CONTRACTOR
23 COULD COME IN WITH ONE BID AND A FEW YEARS YEAR LATER GET A
24 SUBSTANTIAL INCREASE IN THE COMPENSATION?

25 A. WE HAD CONVERSATIONS ABOUT THE PURPOSE OF THE
26 AMENDMENT TO DELIVER THE COUNCIL'S POLICY GOALS OF LABOR
27 PEACE, WORK RETENTION, AND QUALITY SERVICE.

28 Q. WHO DID YOU HAVE THESE CONVERSATIONS WITH?

1 A. THOSE WOULD BE IN THE CONTEXT OF STAFF MEETINGS.

2 Q. WOULD THAT INCLUDE THE MAYOR?

3 A. I BELIEVE SO.

4 Q. WAS IT YOUR VIEW THAT PAYING AN ADDITIONAL \$11
5 MILLION TO NORCAL FURTHERED SOME OF THE PREVIOUS POLICIES OF
6 THE CITY OF SAN JOSE?

7 A. YOU'RE ASKING IF I THOUGHT SO?

8 Q. YES.

9 A. I BELIEVE IT WAS.

10 Q. WHICH POLICIES WERE FURTHERED BY THIS ADDITIONAL
11 PAYMENT TO NORCAL?

12 A. THE CITY COUNCIL'S ORIGINAL GOALS WERE SEVERAL. TO
13 REDUCE COST COMPARED TO PREVIOUS CONTRACTORS, TO PROVIDE
14 GOOD SERVICE, TO PROTECT THE WORKERS EMPLOYED BY THE
15 CONTRACTORS WHO MIGHT BE OTHERWISE DISLOCATED BY THIS CHANGE
16 IN SERVICE, AND TO ACHIEVE LABOR PEACE.

17 THOSE WERE POLICY GOALS THAT WERE IN THE RFP AND
18 DISCUSSED BY THE CITY COUNCIL SEVERAL TIMES OVER THE COURSE
19 OF THIS CONTRACT.

20 Q. AND WHICH OF THOSE GOALS DO YOU BELIEVE WERE BEING,
21 WOULD BE FURTHERED BY PAYING NORCAL AN ADDITIONAL \$11
22 MILLION?

23 A. THIS WOULD BE ABOUT PAYING WORKERS THE COST UNDER

24 PREVALING WAGE AND LABOR PEACE, WORKER RETENTION, AND ALSO,
25 IN MY OPINION, APPROPRIATE PUBLIC POLICY TO PROTECT THE
26 PEOPLE OF SAN JOSE FROM THE UNCERTAINTIES OF A CONTRACT
27 WHERE A CONTRACTOR MIGHT BE LOSING MONEY AND BE ACTUALLY NOT
28 PROVIDING THE LEVELS OF SERVICE, QUALITY OF SERVICE WE COULD

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2100

1 MEET.

2 Q. LET' S LOOK AT SOME OF THOSE GOALS ONE BY ONE.
3 WOULD PAYING NORCAL AN ADDITIONAL \$11 MILLION FURTHER THE
4 GOAL OF COST REDUCTION?

5 A. WELL, AS A RESULT OF THE COMPETITIVE PROCESS FOR
6 RFPS, THE RATEPAYERS, NET, SAVED ABOUT \$40 MILLION COMPARED
7 TO PREVIOUS CONTRACTORS, UNDER PREVIOUS TERMS.

8 Q. WOULD PAYING THEM AN ADDITIONAL \$11 MILLION
9 INCREASE THE SAVINGS OR REDUCE THE SAVINGS?

10 A. IT WOULD HAVE REDUCED THE ORIGINAL ANTICIPATION OF
11 SAVINGS BY \$11 MILLION.

12 Q. THEREFORE, WITH REGARD TO THAT ONE GOAL, COST
13 REDUCTION, WOULDN' T YOU AGREE PAYING AN ADDITIONAL \$11
14 MILLION DID NOT FURTHER COST REDUCTION?

15 A. IN THE SENSE THAT THE CITY SAVED \$40 MILLION, YES,

16 BUT IF IT DID REDUCE THE SAVINGS BY \$11 MILLION, I THINK
17 THERE WOULD BE A DIFFERENT KIND OF COST -- THAT WOULD BE
18 SPECULATIVE, BUT IT'S THE KIND OF SITUATION OF PAY ME NOW OR
19 PAY ME LATER. IF YOU HAVE A CONTRACTOR LOSING MONEY OR IS
20 NOT PAYING ITS EMPLOYEES AT PREVAILING WAGE AS REQUIRED,
21 THEN YOU WOULD HAVE A DIFFERENT KIND OF PROBLEM.

22 Q. I UNDERSTAND. BUT STRICTLY FROM A COST REDUCTION
23 POINT OF VIEW, PAYING \$11 MILLION DOESN'T FURTHER COST
24 REDUCTION; IT WORKS IN THE OPPOSITE DIRECTION, DOES IT NOT?

25 A. JUST IN THIS INSTANCE.

26 Q. WITH REGARD TO PREVAILING WAGE, ISN'T IT TRUE THAT
27 THE CITY'S PREVAILING WAGE POLICY AT THAT TIME DID NOT APPLY
28 TO THE RECYCLING WORKERS?

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2101

1 A. MY UNDERSTANDING AFTER THE FACT, AFTER WE REVIEWED
2 THE DOCUMENTS LAST YEAR, WAS THAT WAS THE CASE.

3 Q. WITH REGARD TO WORKER REINTENTION, AT THE TIME THAT
4 NORCAL BECAME, STARTED PROVIDING THE SERVICES ON JULY 1,
5 2002, WEREN'T ALL THE DISPLACED WORKERS BEING RETAINED?

6 A. MY UNDERSTANDING IS THAT IS CORRECT.

7 Q. WITH REGARD TO LABOR PEACE, WAS IT NOT THE CASE
8 THAT MORE THAN A YEAR EARLIER, IN THE FIRST HALF OF 2003,

9 THE SUBCONTRACTOR, CWS, HAD ENTERED INTO A NEW LONG-TERM
10 COLLECTIVE BARGAINING AGREEMENT WITH THE TEAMSTERS?

11 A. THEY HAD REACHED AN ORAL AGREEMENT, AS I RECALL, IN
12 EARLY 2003.

13 Q. DID THEY SIGN THE AGREEMENT AS WELL IN 2003?

14 A. I BELIEVE IT WAS EXECUTED BY SUMMER OF 2003.

15 Q. SO HOW WOULD PAYING ADDITIONAL \$11 MILLION TO
16 NORCAL IN THE FALL OF 2004 PROMOTE LABOR PEACE WHEN THE
17 SUBCONTRACTOR HAD ALREADY ENTERED INTO A NEW COLLECTIVE
18 BARGAINING AGREEMENT WITH THE UNION THE YEAR EARLIER?

19 A. WELL, MY OPINION, SIR, IS THAT THE COST OF LABOR IS
20 A COST OF BUSINESS; THE CITY COUNCIL ACKNOWLEDGED, I BELIEVE
21 IT WAS IN 2001, THAT THE MRF WORKERS WERE NOT INCLUDED IN
22 THE ORIGINAL CONTRACT AND ASKED CITY STAFF TO ESTABLISH WHAT
23 THE COST WOULD BE TO INCLUDE THEM, AND IN THE FINAL
24 AGREEMENT, AMENDMENT THAT THE COUNCIL APPROVED IN 2004,
25 DECEMBER, WAS AWARE OF ALL OF THOSE ISSUES YOU JUST NAMED,
26 AND THE COUNCIL'S POLICY AT THE TIME, THE MAJORITY OF
27 COUNCILMEMBERS VOTING, WAS THAT THE AMENDMENT SERVED THE
28 PURPOSE OF POLICY, PURPOSES OF THE COUNCIL THAT IT

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2102

1 ARTICULATED ORIGINALLY.

2 Q. YOU JUST TOLD US YOUR OPINION OF WHAT THE
3 COUNCILMEMBERS THOUGHT WHEN THEY VOTED; IS THAT RIGHT?

4 A. THAT IS CORRECT.

5 MR. FINKELSTEIN: I WILL ASK THE JURY TO DISREGARD
6 THE WITNESS'S SPECULATION ON WHAT SOMEONE ELSE DID OR DIDN'T
7 THINK.

8 BY MR. FINKELSTEIN:

9 Q. WAS THERE ANY DISCUSSION WITH THE MAYOR OR
10 MR. GUERRA THAT YOU CAN RECALL BACK IN 2004 ABOUT WHETHER IT
11 WAS FAIR TO PAY ONE CONTRACTOR FOR ADDITIONAL LABOR COST DUE
12 TO A CHANGE IN A COLLECTIVE BARGAINING AGREEMENT AND NOT PAY
13 ALL THE OTHER CONTRACTORS WHO MAY UNDERGO THOSE SAME
14 CIRCUMSTANCES?

15 A. I DON'T RECALL THAT CONVERSATION.

16 Q. YOU DIDN'T RAISE THAT ISSUE?

17 A. I DID NOT.

18 Q. NOW, AS ORIGINALLY WRITTEN AND SUBMITTED TO THE
19 COUNCIL, ON PAGE TWO OF THE MEMORANDUM, IN THE SECOND FULL
20 PARAGRAPH, THE SECOND SENTENCE READS:

21 AFTER COUNCIL APPROVAL, THE MAYOR'S OFFICE
22 LEARNED THAT THE WORKERS TO BE RETAINED FROM WASTE
23 MANAGEMENT WOULD BE EXPECTED TO EXCHANGE UNIONS.

24 CORRECT?

25 A. YES, I SEE IT.

26 Q. AND DO YOU RECALL WHETHER OR NOT THAT STATEMENT OR

27 WORDS TO THAT EFFECT WAS IN THE FIRST DRAFT YOU RECEIVED
28 FROM MR. GUERRA?

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2103

1 A. I CAN'T SPECIFICALLY RECALL.

2 Q. DID YOU MAKE ANY CHANGE TO THE MEMO CHANGING THE
3 WORD BEFORE TO AFTER?

4 A. I DON'T BELIEVE SO.

5 Q. YOU DIDN'T HAVE ANY FIRST-HAND KNOWLEDGE ABOUT WHAT
6 HAD HAPPENED BACK IN 2000 REGARDING ANY MEETINGS BETWEEN THE
7 MAYOR, MR. GUERRA, AND NORCAL, CORRECT?

8 A. THAT'S CORRECT.

9 Q. AND AT THE TIME YOU WERE WORKING ON THIS MEMO, THE
10 SEPTEMBER 16, 2004 MEMO, DID YOU ASK EITHER THE MAYOR OR
11 MR. GUERRA WHAT HAPPENED BACK IN 2000, WHAT'S THE HISTORY OF
12 THIS DEAL, HOW DID WE GET HERE?

13 A. I DID NOT.

14 Q. SO THE INFORMATION YOU WERE WORKING OFF OF WAS
15 ESSENTIALLY THE FIRST DRAFT OF MR. GUERRA?

16 A. CORRECT.

17 Q. WOULD IT BE FAIR TO ASSUME THEN THAT SINCE YOU HAD
18 NO FIRST-HAND KNOWLEDGE OF WHAT THE, OF THE EVENTS RECITED
19 IN THE MEMO, YOU HAD NO DISCUSSIONS WITH THE PERSONS WHO

20 MIGHT HAVE HAD FIRSTHAND KNOWLEDGE ABOUT THE EVENTS IN THE
21 MEMO, THAT YOUR EDITING EFFORTS WERE CONFINED TO STYLISTIC
22 AND GRAMMATICAL MATTERS, NOT SUBSTANTIVE FACTS?

23 A. YES.

24 Q. STAYING WITH THE SAME PARAGRAPH, THE ONE THAT
25 BEGINS ON PAGE TWO:

26 HOWEVER, IT SOON BECAME CLEAR THE SITUATION
27 WAS MORE COMPLEX.

28 IN THE MIDDLE OF THE PARAGRAPH IT TALKS ABOUT THE

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2104

1 MAYOR'S OFFICE CONVENING A MEETING BETWEEN NORCAL AND THE
2 LEADERSHIP OF THE TEAMSTERS LOCAL AND A REPRESENTATIVE OF
3 THE CENTRAL LABOR COUNCIL TO IDENTIFY SOLUTIONS OF THE
4 JURISDICTIONAL ISSUE.

5 DO YOU SEE THAT SENTENCE?

6 A. I DO.

7 Q. DID YOU KNOW AT THE TIME WHO THE REPRESENTATIVE OF
8 THE CENTRAL LABOR COUNCIL WAS?

9 A. NO.

10 Q. HOW DID YOU FIRST LEARN THAT THE STATEMENT, "AFTER
11 COUNCIL APPROVAL, THE MAYOR'S OFFICE LEARNED THAT THE

12 WORKERS TO BE RETAINED FROM WASTE MANAGEMENT WOULD BE
13 EXPECTED TO CHANGE UNIONS," MIGHT NOT BE ACCURATE?

14 A. I THINK EITHER JOE MENTIONED IT TO ME, OR IT MAY
15 HAVE BEEN DAVID YARNOLD. I DON'T KNOW WHO SUGGESTED IT TO
16 ME FIRST.

17 Q. WAS THAT AS A RESULT OF THIS EDITORIAL ON OCTOBER
18 14?

19 A. I THINK IT WAS PRIOR TO THE EDITORIAL.

20 Q. PRIOR TO THE EDITORIAL?

21 A. THAT'S MY RECOLLECTION.

22 Q. DO YOU KNOW ON WHAT OCCASION MR. GUERRA POINTED
23 THAT OUT TO YOU?

24 A. I DO NOT, AND I DON'T RECALL WHETHER JOE CAME TO ME
25 FIRST OR MR. YARNOLD DID. TOGETHER WE WOULD HAVE TALKED
26 ABOUT IT, HERE IT IS, AND PREPARED A RESPONSE TO THE MERCURY
27 NEWS.

28 Q. I THINK I MAY HAVE SKIPPED OVER ONE MEMO I WANTED

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2105

1 TO ASK YOU ABOUT. LET ME SHOW YOU ANOTHER MEMO, WHAT'S BEEN
2 MARKED AS EXHIBIT 21. THIS IS A DECEMBER 8 MEMO, WHICH
3 READS:

4 FROM MAYOR RON GONZALES AND OTHERS, SUBJECT:
Page 222

5 SELECTION OF CONTRACTORS FOR RECYCLE PLUS, DATED
6 DECEMBER 8, 2000.

7 DO YOU RECALL WHETHER OR NOT YOU WORKED ON THIS
8 MEMO?

9 A. NOT SPECIFICALLY. JUST JUDGING BY ITS FORMAT, IT'S
10 VERY POSSIBLE THAT I DID.

11 Q. IT'S POSSIBLE YOU DID?

12 A. YES.

13 Q. DO YOU RECALL THIS WAS PREPARED IN CONNECTION WITH
14 THE SECOND CITY COUNCIL VOTE BACK IN 2000 ON THE SELECTION
15 OF HAULERS, CORRECT?

16 A. MM-HMM.

17 Q. YES?

18 A. YES.

19 Q. AND DO YOU RECALL OF YOUR OWN FIRSTHAND KNOWLEDGE
20 THAT WHAT HAPPENED AT THE FIRST VOTE ON OCTOBER 10 WAS THE
21 SELECTED VENDORS' PROPOSALS WERE REFERRED TO THE CITY
22 AUDITOR TO BE REVIEWED AND A REPORT TO BE PREPARED BACK TO
23 THE COUNCIL. DO YOU RECALL THAT?

24 A. YES.

25 Q. AND THIS IS NOW THE SECOND COUNCIL MEETING IN
26 DECEMBER 2000 FOR THE RECEIPT OF THE REPORT AND THE FINAL
27 SELECTION, CORRECT?

28 A. CORRECT.

1 Q. SO AT THE TIME THAT THIS MEMO WAS BEING PREPARED,
2 DID YOU THINK YOU MIGHT HAVE WORKED ON THAT?

3 A. CORRECT.

4 Q. DID YOU HAVE ANY INFORMATION OR KNOWLEDGE ABOUT
5 THERE BEING A POTENTIAL ISSUE INVOLVING SUBSTANTIAL
6 ADDITIONAL LABOR COSTS THAT NORCAL OR ITS SUBCONTRACTOR
7 MIGHT HAVE TO ENCOUNTER AS A RESULT OF SWITCHING FROM
8 LONGSHOREMEN TO TEAMSTERS?

9 A. I WAS NOT AWARE.

10 Q. HOW DID YOU FIRST LEARN THAT THERE WAS A POTENTIAL
11 ISSUE REGARDING ADDITIONAL LABOR COSTS FOR EITHER NORCAL OR
12 ITS SUBCONTRACTOR, CWS, RESULTING FROM THE SUBCONTRACTOR,
13 CWS, SWITCHING FROM LONGSHOREMEN TO TEAMSTERS?

14 A. I THINK THE FIRST TIME I CAN RECALL SPECIFICALLY
15 BEING AWARE OF IT WAS DURING THE MEDIATION EFFORTS IN EARLY
16 2003, WHEN THERE WERE LABOR DISPUTES AND CONTRACT DISPUTES
17 BETWEEN CWS, NORCAL, AND THE TEAMSTERS. AND THERE WAS
18 MEDIATION THAT THE MAYOR ASKED JOE GUERRA TO BE INVOLVED IN.

19 Q. TRY AND RESOLVE A NEW CONTRACT DISPUTE BETWEEN CWS
20 AND TEAMSTERS, CORRECT?

21 A. AND THERE WAS ALSO A NORCAL ISSUE AS WELL.

22 Q. WHAT WAS THE NORCAL ISSUE?

23 A. THERE WAS DISAGREEMENT BETWEEN NORCAL AND CWS, AS I
24 RECALL AT THIS POINT, AND I THINK PART WAS THAT THE BUILDING
25 BEFORE, OR AT THE TIME OF THE PAYMENTS, I WAS NOT INVOLVED
26 IN THE MEDIATION, I JUST RECALL OBSERVING SHUTTLE DIPLOMACY
27 IN THE OFFICE, IF YOU WOULD.

28 Q. HOW DID YOU FIRST LEARN THAT THE MAYOR MAY HAVE HAD

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2107

1 A MEETING ON FRIDAY, OCTOBER 6, 2000 WITH REPRESENTATIVES OF
2 NORCAL? THIS IS THE FRIDAY BEFORE THE FIRST TUESDAY VOTE ON
3 OCTOBER 10, 2000.

4 A. IT WAS NOT A MEETING I WOULD NORMALLY BE AWARE OF,
5 AND I THINK THE FIRST TIME I WAS AWARE OF IT IS WHEN THE
6 GRAND JURY ISSUED ITS REPORT LAST YEAR.

7 Q. AS I UNDERSTAND YOUR TESTIMONY, YOUR RECOLLECTION
8 IS THAT YOU FIRST LEARNED THAT THE WORD "AFTER" IN THE
9 MAYOR'S SEPTEMBER 16, 2004 MEMO SHOULD HAVE READ "BEFORE" TO
10 MAKE IT MORE ACCURATE, CORRECT?

11 A. CORRECT.

12 Q. AND YOU FIRST LEARNED THAT AFTER THE FIRST VOTE AND
13 BEFORE THE SECOND VOTE?

14 A. CORRECT.

15 Q. WHAT DID YOU DO, IF ANYTHING, TO TRY TO CORRECT ANY
Page 225

16 FALSE IMPRESSION THAT MIGHT HAVE BEEN LEFT BY THE ORIGINAL
17 SEPTEMBER 16, 2004 MEMO?

18 A. I THINK WHAT WE DID WAS --

19 Q. WHEN YOU SAY WE -- THAT'S ONE OF THESE TECHNICAL
20 EVIDENCE ISSUES. YOU CAN ONLY SPEAK FOR YOURSELF.

21 A. WHILE I DON'T HAVE A SPECIFIC RECOLLECTION, I
22 BELIEVE THAT JOE GUERRA AND I DID HAVE CONVERSATIONS AROUND
23 THAT TIME ABOUT RESPONDING TO DAVID YARNOLD AT THE
24 NEWSPAPER.

25 Q. DID YOU HAVE ANY CONVERSATIONS ABOUT AMENDING THE
26 MEMO OR SUBMITTING A SUPPLEMENTARY MEMO TO CORRECT ANY FALSE
27 IMPRESSIONS THAT MIGHT HAVE BEEN CREATED BY THE USE OF THE
28 WORD AFTER INSTEAD OF BEFORE?

SUE HERFURTH, CSR #9645

2108

1 A. I DON'T RECALL HAVING THAT CONVERSATION.

2 Q. DID YOU TALK TO THE MAYOR TO TRY AND UNDERSTAND
3 BETTER WHETHER THIS HAPPENED BEFORE OR AFTER THE COUNCIL
4 VOTE?

5 A. NO.

6 MR. FINKELSTEIN: I AM GOING TO MARK A GRAND JURY
7 EXHIBIT NEXT.

8 LET ME JUST PULL THE DOCUMENT OUT. THIS IS A
9 THREE-PAGE DOCUMENT. IT APPEARS TO BE A PRINTOUT OF AN
10 E-MAIL FROM RON GONZALES SENT TUESDAY, JUNE 28, 2005 AT 6:07
11 P.M. THE SUBJECT READS, "UPDATE ON NORCAL INVESTIGATION,"
12 AND THE E-MAIL BEGINS, "DEAR FRIEND." IT'S THREE PAGES;
13 THEY ARE BATES NUMBERED AT THE BOTTOM, DV000156 THROUGH
14 158.

15 THE FOREPERSON: SO MARKED.

16 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
17 JURY EXHIBIT 135.)

18 BY MR. FINKELSTEIN:

19 Q. I WILL DISPLAY, WHILE YOU READ THAT, THE FIRST
20 PAGE. HAVE YOU SEEN THAT E-MAIL BEFORE?

21 A. YES.

22 Q. CAN YOU TELL US WHAT THAT EXHIBIT IS?

23 A. THIS IS AN E-MAIL THAT MAYOR GONZALES SENT TO THE
24 E-MAIL DISTRIBUTION LIST THAT HE MAINTAINS. I WORKED WITH
25 THE MAYOR IN PREPARING THE TEXT OF THIS E-MAIL, AND IT IS
26 BASED ON A Q&A ARTICLE IN THE MERCURY NEWS WITH THE MAYOR'S
27 ADDITIONAL CLARIFICATIONS TO THE VARIOUS RESPONSES THAT WAS
28 IN THE PAPER.

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1 Q. WHY IS IT YOUR NAME APPEARS AT THE VERY TOP OF THIS
2 DOCUMENT, DO YOU KNOW?

3 A. WHEN MAYOR GONZALES SENDS THE DISTRIBUTION, I AM
4 COPIED ON THAT LIST. THIS IS A PRINTOUT FROM MY MACHINE.

5 Q. RIGHT. IN OTHER WORDS, YOU USE THE OUTLOOK E-MAIL
6 PROGRAM?

7 A. CORRECT.

8 Q. IF YOU PRINT OUT THAT E-MAIL WITH YOUR NAME LOGGED
9 IN, THAT'S THE NAME THAT APPEARS AT THE TOP?

10 A. THAT'S CORRECT.

11 Q. AND THIS WAS PRODUCED IN RESPONSE TO THE GRAND JURY
12 SUBPOENA; IS THAT CORRECT?

13 A. UH -- IT MUST BE. I SUPPLIED --

14 Q. YOU SUPPLIED THE CITY ATTORNEY WITH DOCUMENTS
15 RESPONSIVE TO THIS SUBPOENA?

16 A. CORRECT.

17 Q. THE BATES NUMBERING SYSTEM ON THE BOTTOM, DV, THAT
18 REFERS TO YOU?

19 A. I ASSUME SO.

20 Q. THE DISTRIBUTION LIST THAT THIS E-MAIL WENT OUT TO,
21 DO YOU KNOW, CAN YOU DESCRIBE THAT LIST FOR US ANY BETTER?

22 A. IT'S MAYBE ABOUT 300 NAMES. COMMUNITY, BUSINESS,
23 POLITICAL LEADERS, COMMUNITY LEADERS IN SAN JOSE, SILICON
24 VALLEY.

25 Q. WOULD IT ALSO GO OUT TO OTHER COUNCILMEMBERS?

26 A. THERE MAY HAVE BEEN SOME COUNCILMEMBERS ON IT, BUT
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27 DOESN' T NECESSARILY INCLUDE ALL COUNCIL MEMBERS. I WOULD
28 HAVE TO SEE A FULL LIST.

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2110

1 Q. ESSENTIALLY 300, APPROXIMATELY 300 COMMUNITY
2 LEADERS THAT ARE IN SOME WAY ACTIVE IN POLITICAL MATTERS AND
3 COMMUNITY AFFAIRS?

4 A. CORRECT.

5 Q. NOW, WHEN YOU SAY YOU HELPED THE MAYOR PREPARE
6 THIS, WHAT EXACTLY DID YOU DO?

7 A. I PRODUCED THE ROUGH DRAFT AND I ROUTED IT TO
8 PEOPLE IN OUR OFFICE SUCH AS THE MAYOR, REBECCA DISHOSKI,
9 JOE GUERRA, TO REVIEW AND MAKE SURE IT WAS ACCURATE AND
10 RETURN IT BACK TO THE MAYOR TO HAVE HIM APPROVE IT OR CHANGE
11 IT.

12 Q. DID HE APPROVE IT?

13 A. YES, HE APPROVED IT AND DISTRIBUTED IT.

14 Q. LET'S FIRST START, SO WE CAN ORIENT THE JURY ABOUT
15 THE FORMAT OF THIS E-MAIL, IS IT CORRECT THAT THERE WAS A
16 STORY IN THE MERCURY NEWS ON JUNE 18 ABOUT THE GRAND JURY
17 REPORT?

18 A. THERE WERE MANY STORIES IN THE MERCURY NEWS. I

19 COULDN'T VERIFY THAT DATE.

20 Q. LET ME JUST DIRECT YOUR ATTENTION --

21 A. OH, THERE IT IS.

22 Q. IS THAT, THE PARTS IN ITALICS, AS THE MAYOR HAD
23 SAID IN HIS E-MAIL, THAT'S WHAT WAS PUBLISHED IN THE MERCURY
24 NEWS?

25 A. CORRECT.

26 Q. THE FORMAT OF THE STORY WAS A Q&A FORM, QUESTION
27 AND ANSWER FORMAT?

28 A. CORRECT.

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2111

1 Q. THEN THE RESPONSE FROM THE MAYOR, THAT'S THE
2 PARAGRAPH THAT HAS THE "RG:" IN FRONT OF IT?

3 A. THAT'S CORRECT.

4 Q. IS IT CORRECT THAT THIS E-MAIL WENT OUT ON OR ABOUT
5 JUNE 28 OF 2005?

6 A. YES, BASED ON THE TIME STAMP.

7 Q. DO YOU HAVE ANY REASON TO BELIEVE THE DATE AND TIME
8 STAMP WAS NOT ACCURATE?

9 A. NO, I DO NOT.

10 Q. LET'S LOOK AT PAGE TWO OF THIS EXHIBIT. AT THE TOP
11 OF PAGE TWO, THE FIRST RESPONSE AT THE TOP OF PAGE TWO, THE

12 MAYOR SAYS:

13 WHEN I MET WITH NORCAL ON OCTOBER 6, 2000, I
14 DID NOT KNOW ABOUT THIS ISSUE AND IT WAS NOT
15 DISCUSSED.

16 IS THAT WHAT THE E-MAIL SAYS?

17 A. THAT'S WHAT IT SAYS.

18 Q. AND DO YOU RECALL SPECIFICALLY TALKING TO THE MAYOR
19 ABOUT THAT POINT?

20 A. NOT SPECIFICALLY ABOUT THAT POINT, BUT WE TALKED
21 ABOUT THE ISSUES THAT WERE RAISED BY THE GRAND JURY,
22 INCLUDING THIS MEETING.

23 Q. AT THAT TIME, BACK IN JUNE 2005, IF THE MAYOR SAID
24 TO YOU, THAT'S NOT CORRECT, THERE WAS SOME DISCUSSION ABOUT
25 IT, YOU WOULD HAVE CHANGED THAT?

26 A. HE DID NOT SAY THAT.

27 Q. SO THE VERSION OF EVENTS THAT THE MAYOR IS SAYING
28 IN THIS E-MAIL TO 300 OR SO COMMUNITY LEADERS IS ONLY ONE

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2112

1 DAY BEFORE THE COUNCIL APPROVED THE CITY STAFF'S RECOMMENDED
2 VENDOR. THAT WOULD BE OCTOBER 9, 2000, CORRECT?

3 A. CORRECT.

4 Q. I LEARNED -- MEANING THE MAYOR LEARNED,
5 THAT THERE WAS A DISPUTE BETWEEN THE
6 LONGSHOREMEN AND THE TEAMSTERS ABOUT WHO WOULD
7 REPRESENT THE GARBAGE SORTERS. WE HAD NO IDEA AT
8 THAT TIME WHAT THE COST OF THAT DIFFERENCE WOULD
9 BE. IN FACT, IT WOULD HAVE BEEN IMPOSSIBLE TO
10 CALCULATE THE DIFFERENCE AT THAT POINT AS LABOR
11 NEGOTIATIONS BETWEEN CWS AND THE TEAMSTERS DID NOT
12 EVEN BEGIN FOR SOME TIME.

13 WHEN I MET WITH NORCAL ON OCTOBER 6, 2000, I
14 DID NOT KNOW ABOUT THIS ISSUE AND IT WAS NOT
15 DISCUSSED.

16 THAT'S WHAT THE MAYOR SAYS IN THIS E-MAIL,
17 CORRECT?

18 A. CORRECT.

19 Q. THEN A LITTLE FURTHER DOWN THE PAGE, THE MAYOR HAS
20 A RESPONSE TO THE QUESTION IN THE MERCURY ARTICLE, WHAT DID
21 GONZALES DO? AND HIS RESPONSE IS:

22 I DID NOT CALL FOR THIS MEETING, IT WAS
23 REQUESTED BY NORCAL AS A COURTESY MEETING. NORCAL
24 WAS DOING THE SAME WITH OTHER COUNCILMEMBERS AT
25 THAT TIME. THIS 30-MINUTE MEETING WAS ON THE
26 FRIDAY BEFORE THE COUNCIL MEETING, AND IT WAS THE
27 ONE AND ONLY TIME I MET WITH NORCAL. WE HAVE NO
28 RECORD OF CWS BEING PRESENT AT THIS MEETING, AND

1 NEITHER JOE GUERRA NOR I REMEMBER THEM BEING
2 THERE. AT THIS SESSION I TOLD NORCAL THAT I
3 WANTED THE COMPANY TO PROVIDE EXCELLENT SERVICE
4 FOR THE PEOPLE OF SAN JOSE AND TO WORK HARD TO
5 ENSURE LABOR PEACE. THERE WAS NO DISCUSSION OF
6 THE WAGE DIFFERENTIAL AT THIS MEETING.

7 IS THAT WHAT THE MAYOR HAS SAID IN THIS E-MAIL?

8 A. THAT'S CORRECT.

9 Q. AT THE TIME YOU WORKED ON THIS E-MAIL THAT WENT OUT
10 TO THESE 300 COMMUNITY LEADERS, DID YOU TALK TO THE MAYOR
11 SPECIFICALLY ABOUT THIS PARAGRAPH I JUST READ?

12 A. ONLY IN THE E-MAIL EXCHANGE OF MAKING CORRECTIONS
13 TO THE LANGUAGE AS MATERIAL WAS BEING PREPARED.

14 Q. WHAT E-MAIL EXCHANGE IS THAT? YOU HAVEN'T TOLD US
15 ABOUT THAT.

16 A. IF I DRAFT SOMETHING, I SEND IT TO THE MAYOR TO
17 REVIEW. I DON'T SPECIFICALLY RECALL ANY EDITS OR CHANGES HE
18 MADE TO THIS PARTICULAR E-MAIL, BUT THAT WOULD HAVE BEEN THE
19 TIME HE MADE SUCH CORRECTIONS.

20 Q. IS IT BY E-MAIL THAT HE WOULD COMMUNICATE BACK HIS
21 APPROVAL, LOOKS OKAY TO ME, OR GO AHEAD AND SEND IT,
22 ANYTHING LIKE THAT?

23 A. GENERALLY, YES.

24 Q. SO I DON'T RECALL SEEING ANY SUCH E-MAILS, ARE
25 THOSE E-MAILS KEPT OR -- THAT DOESN'T MEAN WE DON'T HAVE
26 THEM, WE HAVE A LOT OF DOCUMENTS. I JUST DON'T RECALL
27 SEEING THEM.

28 A. IT'S VERY LIKELY IT'S IN THE PILE. YOU HAVE A

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2114

1 LARGE STACK OF MATERIAL, AND I HAVE AN UNFORTUNATE HABIT OF
2 SAVING E-MAILS.

3 Q. MANY HAVE SAID THAT.

4 A. SINCE MY MEMORY IS NOT PERFECT, IT HELPS THAT WAY.

5 Q. YOU HAVE NO KNOWLEDGE OF ANY ATTEMPTS TO DELETE
6 THESE CHANGES THAT LED UP TO THE FINAL VERSION?

7 A. NO.

8 MR. FINKELSTEIN: IT'S ABOUT FIVE OF 11:00. MAYBE
9 WE SHOULD TAKE A RECESS AND SEE IF WE CAN GET THE COURT
10 STAFF TO DO SOMETHING ABOUT THE AIR CONDITIONING.

11 THE FOREPERSON: YOU ARE ADMONISHED NOT TO REVEAL
12 TO ANY PERSON, EXCEPT AS DIRECTED BY THE COURT, WHAT
13 QUESTIONS WERE ASKED OR WHAT RESPONSES WERE GIVEN OR ANY
14 OTHER MATTERS CONCERNING THE NATURE OR SUBJECT OF THE GRAND

15 JURY'S INVESTIGATION WHICH YOU LEARNED DURING YOUR
16 APPEARANCE BEFORE THE GRAND JURY, UNLESS AND UNTIL SUCH TIME
17 AS THE TRANSCRIPT OF THIS GRAND JURY PROCEEDING IS MADE
18 PUBLIC. VIOLATION OF THIS ADMONITION MAY BE PUNISHABLE AS
19 CONTEMPT OF COURT.

20 DO YOU UNDERSTAND THAT?

21 THE WITNESS: I UNDERSTAND.

22 MR. FINKELSTEIN: NOW, I HAVEN'T RECEIVED
23 NOTIFICATION THAT YOU ARE REPRESENTED BY COUNSEL, SO I
24 ASSUME YOU'RE NOT REPRESENTED; IS THAT CORRECT?

25 THE WITNESS: THAT'S CORRECT.

26 MR. FINKELSTEIN: THAT MEANS YOU CAN'T TALK TO
27 ANYBODY ABOUT WHAT YOU MAY HAVE LEARNED FROM YOUR APPEARANCE
28 BEFORE THE GRAND JURY.

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2115

1 THE WITNESS: I UNDERSTAND.

2 MR. FINKELSTEIN: THANK YOU. WE'LL SEE YOU IN
3 ABOUT FIVE MINUTES. YOU CAN WAIT OUTSIDE, AND YOU CAN LEAVE
4 THE EXHIBITS THERE.

5 (A BRIEF RECESS WAS TAKEN.)

6 THE FOREPERSON: LET'S COME BACK TO ORDER. LET
7 THE RECORD SHOW ALL 19 JURORS ARE PRESENT.

EXAMINATION, CONTINUED:

8

9

BY MR. FINKELSTEIN:

10

Q. MR. VOSSBRINK, I'LL JUST REMIND YOU YOU'RE STILL
11 UNDER OATH, HAVING BEEN PREVIOUSLY SWORN IN THIS
12 INVESTIGATION. DO YOU UNDERSTAND THAT?

13

A. YES, SIR.

14

Q. THANK YOU. WHEN WE BROKE, WE WERE LOOKING AT THE
15 JUNE 28, 2005 E-MAIL FROM RON GONZALES THAT YOU TOLD US RON
16 GONZALES SENT TO APPROXIMATELY 300 POLITICAL LEADERS,
17 COMMUNITY LEADERS, CORRECT?

18

A. CORRECT.

19

Q. LET ME DIRECT YOUR ATTENTION TO THE TWO STATEMENTS
20 THAT WE TALKED ABOUT PREVIOUSLY. STARTING WITH THE FIRST
21 ONE, WHICH SAYS THAT WHEN THE MAYOR MET WITH NORCAL ON
22 OCTOBER 6, 2000, HE DID NOT KNOW ABOUT THIS ISSUE AND IT WAS
23 NOT DISCUSSED.

24

REFERRING TO THE DISPUTE BETWEEN THE LONGSHOREMEN
25 AND THE TEAMSTERS, CONCERNING WHO WOULD REPRESENT THE
26 RECYCLING WORKERS. THAT'S WHAT IT SAYS IN THIS JUNE 28
27 E-MAIL, CORRECT?

28

A. YES.

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1 Q. SUBSEQUENT TO THE JUNE 28 E-MAIL, DID YOU COME TO
2 LEARN THAT STATEMENT WAS NOT ACCURATE?

3 A. WE LEARNED SUBSEQUENT TO THAT.

4 Q. WHEN YOU SAY WE, AGAIN, I'M ASKING WHEN YOU
5 LEARNED --

6 A. IN THE COURSE OF PREPARING A RESPONSE TO THE GRAND
7 JURY, I SAW CORRESPONDENCE BETWEEN THE MAYOR'S OFFICE AND
8 NORCAL AND CWS AND THE TEAMSTERS, AS I RECALL, REFERRING TO
9 THAT JURISDICTIONAL ISSUE, AND I THINK IT WAS DATED THE WEEK
10 BEFORE THE COUNCIL MEETING.

11 Q. THAT WAS IN THE WEEK PRECEDING THE FIRST COUNCIL
12 VOTE ON OCTOBER 10, 2000?

13 A. CORRECT.

14 Q. DID YOU TALK TO THE MAYOR ABOUT THIS DISCREPANCY?

15 A. I PROBABLY DID. I DON'T HAVE A SPECIFIC
16 RECOLLECTION ABOUT THAT CONVERSATION ON THAT SUBJECT, BUT WE
17 WERE DISCUSSING THE RESPONSE OVER THE PERIOD OF SEVERAL
18 MONTHS.

19 Q. DO YOU HAVE ANY RECOLLECTION OF THE MAYOR -- DID
20 YOU CONFRONT THE MAYOR WITH THIS CORRESPONDENCE TO SEE
21 WHETHER OR NOT THAT MIGHT ASSIST HIS RECOLLECTION?

22 A. AS ALL OF US WERE IN THE OFFICE INVOLVED IN
23 PREPARING THE RESPONSE AND LOOKING AT DOCUMENTS, WE
24 RECOGNIZED THAT THIS STATEMENT ABOUT THE KNOWLEDGE WAS IN
25 ERROR, AND WHEN THE FINAL RESPONSE PREPARED BY THE MAYOR AND

26 THE CITY MANAGER AND THE CITY ATTORNEY WAS SUBMITTED TO THE
27 CITY COUNCIL IN SEPTEMBER, ACKNOWLEDGED THAT THE SUBSEQUENT
28 REVIEW OF DOCUMENTS AND CORRESPONDENCE FOUND THIS TO BE A

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2117

1 STATEMENT THAT WAS INCORRECT.

2 Q. NOW, FURTHER DOWN ON THE SAME PAGE OF THE E-MAIL,
3 AGAIN REFERRING TO THE OCTOBER 6, 2000 MEETING, THERE'S A
4 STATEMENT BY THE MAYOR IN THIS E-MAIL ATTRIBUTED TO THE
5 MAYOR:

6 THERE WAS NO DISCUSSION OF WAGE DIFFERENTIAL
7 AT THIS OCTOBER 6, 2000 MEETING.

8 DO YOU SEE THAT?

9 A. YES.

10 Q. SUBSEQUENT TO THIS JUNE 28, 2005 E-MAIL, DID YOU
11 LEARN THAT THAT STATEMENT WAS NOT ACCURATE?

12 A. I DON'T HAVE A RECOLLECTION ABOUT THAT STATEMENT
13 BEING DISCUSSED, BEING ACCURATE OR INACCURATE.

14 Q. WOULD IT BE FAIR TO SAY AFTER THE GRAND JURY REPORT
15 WAS RELEASED IN 2005, THIS ISSUE ABOUT WHAT HAPPENED AT THE
16 OCTOBER 6, 2000 MEETING BETWEEN THE MAYOR AND NORCAL BECAME
17 THE SUBJECT OF SOME CONTROVERSY IN THE NEWS MEDIA REPORTING?

18 A. THAT'S CORRECT.

19 Q. SO DID YOU HAVE ANY FURTHER DISCUSSIONS WITH THE
20 MAYOR ABOUT THE MAYOR'S RECOLLECTION OF WHAT HAPPENED AT
21 THIS OCTOBER 6, 2000 MEETING?

22 A. IN THE IMMEDIATE WEEKS FOLLOWING THE GRAND JURY
23 REPORT, THE MAYOR RESPONDED FAIRLY STRONGLY TO THE GRAND
24 JURY REPORT. AND HE, IN A SENSE, SAID TO ME AND OTHERS THAT
25 HE WISHES IN RETROSPECT THAT HE HAD NOT RESPONDED
26 IMMEDIATELY AND TAKEN MORE DELIBERATE TIME TO REVIEW
27 DOCUMENTS AND PREPARE A RESPONSE THAT WAS COMPLETE, AS HE
28 DID LATER IN SEPTEMBER.

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2118

1 MR. FINKELSTEIN: I'LL MARK ANOTHER EXHIBIT. THIS
2 IS A TWO-PAGE DOCUMENT THAT APPEARS TO BE A PRINTOUT OF AN
3 ATTACHED E-MAIL FROM DAVID VOSSBRINK TO BARRY WITT DATED
4 JULY 22, 2005, 1:09 P.M. THE SUBJECT IS, "RE: FOLLOWING UP
5 ON SCHEDULE." IT'S BATES STAMPED DV, AS IN DAVID VOSSBRINK,
6 000125 THROUGH 126.

7 THE FOREPERSON: SO MARKED.

8 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
9 JURY EXHIBIT 136.)

10 BY MR. FINKELSTEIN:

11 Q. WOULD YOU TAKE A LOOK AT EXHIBIT 136 AND TELL US IF
12 YOU RECOGNIZE THIS E-MAIL?

13 A. I RECOGNIZE IT.

14 Q. WHAT IS IT?

15 A. IT'S AN EXCHANGE BETWEEN ME AND BARRY WITT, WHO IS
16 A REPORTER WITH THE SAN JOSE MERCURY NEWS. HE HAD SENT SOME
17 ADDITIONAL QUESTIONS ABOUT THE NORCAL MATTER, AND THIS IS MY
18 RESPONSE TO HIM.

19 Q. OKAY. AND DO YOU HAVE ANY REASON TO BELIEVE THAT
20 THE DATE AND TIME STAMPED ON THE E-MAIL IS NOT ACCURATE?

21 A. IT LOOKS ACCURATE TO ME.

22 Q. THIS WAS SENT TO THE MERCURY REPORTER BARRY WITT;
23 IS THAT CORRECT?

24 A. YES.

25 Q. BY YOU?

26 A. CORRECT.

27 Q. THERE ARE SOME FOLLOW-UP QUESTIONS THAT THE
28 REPORTER IS TRYING TO GET ANSWERED BY THE MAYOR, CORRECT?

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2119

1 A. CORRECT.

2 Q. AND PART OF YOUR JOB AS COMMUNICATIONS DIRECTOR IS
3 TO FIELD THOSE QUESTIONS AND SORT OF ACT AS A GO-BETWEEN

4 BETWEEN THE PRESS AND MAYOR?

5 A. YES.

6 Q. SO ONE OF THE QUESTIONS DEALS WITH THE VOTE ON THE
7 ORIGINAL NORCAL AGREEMENT BACK IN 2000. DO YOU RECALL THERE
8 WERE TWO VOTES, AN INITIAL VOTE ON OCTOBER 10, AND A SECOND
9 VOTE ON DECEMBER 12, 2000, CORRECT?

10 A. CORRECT.

11 Q. AND IN BETWEEN THE TWO VOTES THE MAYOR HAD
12 RECOMMENDED AND THE COUNCIL HAD APPROVED REFERRING NORCAL'S
13 PROPOSAL TO THE CITY AUDITOR FOR REVIEW AND RECOMMENDATION
14 BECAUSE THERE WERE SOME CONCERNS THE BID MIGHT BE TOO LOW TO
15 BE TRUE, RIGHT?

16 A. AS I RECALL, THERE WERE CONCERNS ABOUT NORCAL'S
17 ABILITY TO PERFORM FINANCIALLY.

18 Q. WHEN YOU SAY THEIR ABILITY TO PERFORM FINANCIALLY,
19 WHAT DO YOU MEAN?

20 A. UH -- THE COUNCIL WAS CONCERNED ABOUT NORCAL'S
21 FINANCIAL STRENGTH, POSITION, AS I RECALL, AND ASKED THE
22 AUDITOR TO LOOK AT NORCAL'S HISTORY, IF YOU WILL, AND TO
23 LOOK AT THE BOOKS.

24 Q. RIGHT. AND SO ONE PIECE OF INFORMATION THAT WOULD
25 SPEAK TO THAT ISSUE WOULD BE, DID THEY BUILD IN ENOUGH
26 PROFIT; ARE THEY GOING TO BE LOSING MONEY ON THE DEAL AND GO
27 OUT OF BUSINESS, RIGHT?

28 A. I WOULD PRESUME THAT THE AUDITOR, THAT WOULD BE A

1 QUESTION THAT WOULD BE LOOKED AT.

2 Q. RIGHT. SO IN THIS QUESTION FROM MR. WITT OF THE
3 MERCURY NEWS, HE POSES THE FOLLOWING QUESTION WHEN HE SAW
4 THE AUDITOR'S REPORT PRIOR TO THAT MEETING:

5 REFERRING TO THE MAYOR AND THE DECEMBER 12,
6 2000 MEETING, WHICH HAD A SECTION DEVOTED TO
7 POTENTIAL UNION ISSUES BUT DID NOT ADDRESS THE MRF
8 WORKER WAGE ISSUE, WHY DIDN'T RON, REFERRING TO
9 THE MAYOR, POINT OUT TO THE AUDITOR OR THE COUNCIL
10 THAT THERE WOULD BE A COST TO THE CITY WHEN THAT
11 ISSUE WAS RESOLVED?

12 THAT'S ONE OF THE QUESTIONS MR. WITT WANTED
13 ANSWERED?

14 A. CORRECT.

15 Q. DID YOU EVER SEEK AN ANSWER TO THIS QUESTION FROM
16 THE MAYOR?

17 A. WHEN THE MAYOR RETURNED TO THE OFFICE IN AUGUST, WE
18 HAD A SERIES OF CONVERSATIONS IN THE OFFICE, WE BEING ME,
19 THE MAYOR, JOE GUERRA, OTHERS ON HIS STAFF.

20 Q. RIGHT. AND DID THE MAYOR EVER ANSWER THAT QUESTION
21 FOR YOU?

22 A. UH -- AS I RECALL, THE ANSWER WAS ALONG THE
23 LINES --

24 Q. WHEN YOU SAY THE ANSWER, THIS IS THE MAYOR'S ANSWER
25 TO YOU?

26 A. CORRECT. AND I DON'T KNOW, TO TELL YOU NOW, IT WAS
27 AN ANSWER THAT HE GAVE ME IN AUGUST OR LATER. IT WAS TO THE
28 EFFECT THAT THE WAGE ISSUES AND UNION MATTERS WERE STILL

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2121

1 UNRESOLVED AND THAT HE WAS TRYING TO SOLVE THE PROBLEM TO
2 COMPLY WITH THE CITY COUNCIL'S ROLE IN THE CONTRACT.

3 Q. THAT WAS YOUR RECOLLECTION OF THE MAYOR'S ANSWER
4 WHEN YOU MET WITH HIM REGARDING THAT QUESTION?

5 A. CORRECT, ALTHOUGH I DON'T RECALL SPECIFICALLY WHEN
6 THAT PARTICULAR EXCHANGE WAS. I DO KNOW THIS, THAT WHEN THE
7 MAYOR WAS TALKING TO THE NEWS MEDIA IN DECEMBER OF 2005 AND
8 WAS ANSWERING SIMILAR QUESTIONS --

9 Q. I'M NOT, MY QUESTION DOESN'T GO TO THAT. I WANT TO
10 KNOW WHAT THE MAYOR MAY HAVE TOLD YOU PRIVATELY AS OPPOSED
11 TO WHAT HE MAY HAVE SAID PUBLICLY.

12 A. I UNDERSTAND.

13 Q. OKAY. NOW, ANOTHER QUESTION POSED BY MR. WITT IN
14 THE E-MAIL FOR YOU TO GET AN ANSWER TO IS IN THE 12/8/2000

15 MEMO:

16 WHY DID RON STATE, "AS A RESULT OF THE
17 AUDITOR'S INVOLVEMENT, WE NOW CAN HAVE GREATER
18 CONFIDENCE IN THE INFORMATION ABOUT THE POTENTIAL
19 FINANCIAL IMPACTS OF THE CITY COUNCIL'S CHOICES
20 FOR RECYCLE PLUS," WHEN HE KNEW THE POTENTIAL
21 FINANCIAL IMPACTS OF THE MRF WORKERS' WAGES HADN'T
22 BEEN ADDRESSED?

23 DID YOU POSE THAT QUESTION TO THE MAYOR?

24 A. I SHARED BARRY WITT'S QUESTIONS WITH THE MAYOR
25 DURING THIS PERIOD. I DON'T RECALL WHAT THE MAYOR SAID IN
26 RESPONSE TO THAT QUESTION. AND ACTUALLY, I DON'T RECALL
27 SPECIFICALLY WHAT I SENT BACK TO BARRY, TO HIS LIST OF
28 QUESTIONS; IT'S PROBABLY DOCUMENTED WITH MY RESPONSE.

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2122

1 Q. MY QUESTION IS FOCUSED UPON WHETHER YOU HAD A
2 PRIVATE DISCUSSION WITH THE MAYOR AS OPPOSED TO A PUBLIC
3 FORUM THE MAYOR MAY HAVE RESPONDED TO THE NEWS MEDIA ABOUT
4 THAT ISSUE TO FIND OUT WHAT THE MAYOR'S VIEW WAS ON THAT.

5 A. I DON'T SPECIFICALLY RECALL A DISCUSSION ABOUT THAT
6 QUESTION.

7 Q. GENERALLY SPEAKING, AS COMMUNICATIONS DIRECTOR,
8 BEFORE YOU CAN FRAME A RESPONSE IN THE BEST POSSIBLE WAY,
9 ISN'T IT IMPORTANT TO UNDERSTAND WHAT THE CLIENT'S VIEW OF
10 THE ISSUE IS?

11 A. THAT IS TRUE.

12 Q. SO WOULD YOU ASK THE MAYOR WHAT HIS VIEW OF THAT
13 ISSUE WAS REGARDING HOLDING BACK THE POTENTIAL FINANCIAL
14 IMPACT OF THIS LABOR ISSUE AT THE TIME OF THE DECEMBER 2000
15 VOTE WHEN THE AUDIT REPORT WAS BEING REVIEWED?

16 A. LET ME GIVE YOU A GENERAL ANSWER FIRST.

17 Q. OKAY.

18 A. YOU'RE ACTUALLY RIGHT THAT MY ROLE AS
19 COMMUNICATIONS DIRECTOR IS TO WORK WITH THE MAYOR AND OUR
20 STAFF OR CITY ADMINISTRATION TO HELP PROVIDE GOOD
21 INFORMATION FOR NEWS MEDIA INQUIRIES. IT'S ALSO TRUE WE
22 DON'T NECESSARILY ANSWER EACH QUESTION THAT COMES TO US, BUT
23 WE TRY TO PROVIDE INFORMATION THAT PROVIDES CONTEXT FOR A
24 FACT IN RESPONDING TO THE QUESTIONS BEING PUBLISHED.

25 SPECIFICALLY ON THIS ONE, THIS WAS IN THE CONTEXT
26 OF OUR MOVE TO THE NEW CITY HALL, IN THE CONTEXT OF OUR
27 PREPARING TO REVIEW DOCUMENTS FOR THE RESPONSE THAT WAS
28 PREPARED FOR THE GRAND JURY AND SUBMITTED TO THE CITY

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1 COUNCIL IN SEPTEMBER. AND SO WE HAD A SERIES OF
2 CONVERSATIONS ABOUT ALL THESE RELATED ISSUES OVER THE COURSE
3 OF THOSE COUPLE MONTHS FROM JUNE THROUGH SEPTEMBER.

4 SO WHEN I SAY I DON'T RECALL SPECIFICALLY
5 ANSWERING ANY OF THESE, IT'S BECAUSE OF THAT CONTEXT OF
6 HAVING A CONTINUOUS CONVERSATION.

7 Q. AS A COMMUNICATIONS PROFESSIONAL, DID YOU VIEW THIS
8 QUESTION MOST RECENTLY WE'RE TALKING ABOUT AS AN IMPORTANT
9 QUESTION, HOW CAN YOU TELL THE PUBLIC WE CAN HAVE GREATER
10 CONFIDENCE IN THE FINANCIAL IMPACT WHEN YOU HELD BACK A
11 MAJOR FINANCIAL IMPACT FROM THE AUDITOR AND CITY COUNCIL?

12 A. IT'S A SERIOUS AND IMPORTANT QUESTION.

13 Q. RIGHT. AND DID YOU GET AN IMPORTANT RESPONSE BACK
14 FROM THE MAYOR ON IT?

15 A. UH -- I DON'T RECALL SPECIFICALLY WHAT THE MAYOR
16 SAID. IT'S I THINK ALONG THE LINES OF TRYING TO ACCOMPLISH
17 THE GOALS OF THE COUNCIL. BUT I DON'T REMEMBER WHAT MAYOR
18 GONZALES SAID IN RESPONSE TO BARRY'S SPECIFIC QUESTION. I
19 PROBABLY HAVE IT IN WRITING WHAT MY ANSWERS WERE TO BARRY.

20 Q. THE NEXT QUESTION MR. WITT POSES READS AS
21 FOLLOWS -- BY THE WAY, THE DECEMBER 8 MEMO, WHICH IS THE
22 SECOND MEMO ON THE SECOND VOTE -- DID YOU WORK ON THAT MEMO?

23 A. I DON'T KNOW. I MAY HAVE. THIS IS IN DECEMBER OF
24 2000?

25 Q. YES.

26 A. I THINK YOU SHOWED THAT MEMO EARLIER THIS MORNING.
27 Q. RIGHT.
28 A. JUDGING BY THE FORMAT OF IT, I PROBABLY DID DO

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1 QUALITY CONTROL IN TERMS OF EDITING THE LANGUAGE. I DON'T
2 HAVE A SPECIFIC RECOLLECTION OF EDITING THAT MEMO BASED --

3 Q. NEXT QUESTION POSED:

4 IN THAT SAME MEMO, WHY DID HE, REFERRING TO
5 THE MAYOR, SAY, "BECAUSE WE HAVE BEEN ABLE TO
6 DOUBLE CHECK THE RECYCLE PLUS PROPOSAL AND
7 ANALYSIS, TO CLARIFY ASSUMPTIONS, CORRECT ERRORS,
8 AND RECALCULATE FINANCIAL IMPACTS, IT REMAINS VERY
9 CLEAR THAT OUR COMPETITIVE PROCESS CAN ACHIEVE
10 THESE DESIRED RESULTS," WHEN HE DIDN'T KNOW WHAT
11 THE FINANCIAL IMPACT WOULD BE OF THE MRF WORKER
12 WAGE ISSUE?

13 DID YOU TRY TO GET AN ANSWER FROM THE MAYOR ON
14 THAT QUESTION?

15 A. AGAIN, AS I SAID BEFORE, I SHARED THESE QUESTIONS
16 WITH THE MAYOR AND OUR STAFF IN THE MAYOR'S OFFICE, AND WE
17 DIDN'T GO THROUGH SPECIFIC QUESTION BY QUESTION AS I RECALL.

18 MAYBE WE DID, BUT I DON'T RECALL THAT, AND IN THIS MATTER WE
19 TALKED ABOUT THE GOALS OF SAVING RATEPAYERS' FUNDS COMPARED
20 TO PREVIOUS CONTRACTS IN THE PROCESS THAT HAVE BEEN
21 PROCESSED, THE ANSWER WOULD BE IN THAT LINE.

22 Q. LOOK. AS A COMMUNICATIONS PROFESSIONAL, YOU'RE --
23 THE NEWSPAPER IN TOWN IS ASKING ABOUT WHY THE MAYOR SAID
24 STATEMENTS SAYING THAT WE COULD HAVE GREAT CONFIDENCE IN THE
25 AUDIT REPORT AND RESULTS BECAUSE ALL THE ISSUES HAVE BEEN
26 LOOKED AT, AND DIDN'T TELL EITHER THE COUNCIL OR THE AUDITOR
27 ABOUT A MAJOR ISSUE THAT HAD FINANCIAL IMPACTS ON THE COSTS
28 OF THIS SERVICE.

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1 YOUR ANSWER IS THE MAYOR CAME BACK TO YOU AND
2 SAID, I WAS FOLLOWING COUNCIL DIRECTION, FURTHERING THE
3 COUNCIL'S GOALS. IS THERE A DISCONNECT HERE? IT SEEMS TO
4 ME THAT'S NOT A RESPONSIVE ANSWER. DOES IT SEEM RESPONSIVE
5 TO YOU?

6 A. AS THE MAYOR HIMSELF SAID LATER THAT YEAR, AND I
7 AGREE WITH IT, THAT IN RETROSPECT THAT HE DID NOT SHARE
8 ENOUGH INFORMATION SOON ENOUGH TO THE CITY COUNCIL. AND THE
9 WHOLE ISSUE IS RELATED TO THE APPROPRIATE EXCHANGE OF
10 INFORMATION BETWEEN THE MAYOR AND CITY COUNCIL AT THE RIGHT

11 TIME.

12 Q. WELL, DOESN'T THIS GO FURTHER THAN SIMPLY NOT
13 SHARING INFORMATION? IT'S AFFIRMATIVELY MAKING STATEMENTS
14 ABOUT HAVING CONFIDENCE IN A SITUATION WHEN HE KNOWS THERE
15 ARE REASONS TO HAVE DOUBT ABOUT WHAT THE COST IS GOING TO
16 BE. THAT'S DIFFERENT THAN SIMPLY BEING SILENT ON THE
17 MATTER. ISN'T HE AFFIRMATIVELY SAYING THINGS THAT ARE NOT
18 ACCURATE?

19 A. I DO NOT KNOW THE ANSWER TO THAT. I DON'T KNOW
20 WHAT WAS IN MAYOR GONZALES' THINKING PROCESSES EITHER IN
21 DECEMBER OF 2000. IN THIS TIME IN 2005, WE WERE IN THE
22 MIDST OF PREPARING A RESPONSE, AND THESE WERE, I BELIEVE,
23 RESPONDED TO IN THE OFFICIAL DOCUMENTS THAT WERE APPROVED BY
24 THE CITY AND THE MAYOR.

25 MR. FINKELSTEIN: LET ME MARK ANOTHER EXHIBIT.
26 THIS IS AN E-MAIL THAT RECITES, FROM DAVID VOSSBRINK TO JOE
27 GUERRA AND REBECCA DISHOSKI. SUBJECT, NORCAL AMENDMENT
28 T.P.S -- I GUESS TALKING POINTS -- REVISED. IT'S DATED

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1 SEPTEMBER 20, 2004 12:41 P.M., AND THERE'S A PRINTOUT OF
2 WHAT I PRESUME IS AN ATTACHMENT TO THE E-MAIL. IT'S BATES

3 STAMPED, IT'S A FIVE-PAGE DOCUMENT. THE BEGINNING BATES
4 NUMBER IS DV, AS IN DAVID VOSSBRINK, 000339, AND IT ENDS IN
5 343.

6 THE FOREPERSON: SO MARKED.

7 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
8 JURY EXHIBIT 137.)

9 BY MR. FINKELSTEIN:

10 Q. TAKE A LOOK AT EXHIBIT 137. DO YOU KNOW WHAT THIS
11 EXHIBIT IS?

12 A. THESE ARE NOTES TO HELP PREPARE THE MAYOR FOR THE
13 COUNCIL MEETING THAT WAS ON SEPTEMBER 21, RELATED TO THE
14 CONTRACT AMENDMENT.

15 Q. SO THIS WOULD HAVE BEEN THE FIRST COUNCIL MEETING
16 ON THE PROPOSED NORCAL AMENDMENT?

17 A. CORRECT.

18 Q. AND T. P. STANDS FOR TALKING POINTS?

19 A. CORRECT.

20 Q. DID THE MAYOR USE ANY OF THESE TALKING POINTS AT
21 THE COUNCIL MEETING?

22 A. I BELIEVE HIS COMMENTS WERE BASED ON THESE. HE
23 DOESN'T ALWAYS USE THE TALKING POINTS VERBATIM, BUT AS
24 GUIDELINES FOR HIS COMMENTS. I DON'T SPECIFICALLY RECALL
25 HOW CLOSE HE STAYED WITH --

26 Q. CAN YOU TELL US IN A LITTLE MORE DETAIL HOW HIS
27 TALKING POINTS WERE PREPARED? DID YOU TAKE A FIRST RUN AT
28 IT, MAKE THE FIRST DRAFT; DID SOMEONE ELSE DO IT AND YOU

1 REVISED IT? EXACTLY HOW DID IT GET PREPARED?

2 A. THESE WOULD BE PREPARED -- IF I CAN GIVE YOU A
3 GENERAL ANSWER FIRST?

4 Q. OKAY.

5 A. THEN I'LL GIVE A SPECIFIC RESPONSE. THE MAYOR'S
6 OFFICE STAFF PREPARED TALKING POINTS FOR THE COUNCIL AGENDAS
7 EVERY WEEK ON A VARIETY OF SUBJECTS. THEY ARE ORIGINATED IN
8 A VARIETY OF WAYS FROM WHOEVER IS HANDLING THE POLICY ISSUE,
9 OR SOMETIMES I WILL DRAFT THEM, AND IT VARIES EVERY WEEK.
10 AND THE AUTHOR OF THE TALKING POINTS OR THE SUBJECT MATTER
11 EXPERT IN OUR OFFICE HAS THE GENERAL RESPONSIBILITY OF
12 PROVIDING INFORMATION, AS A GENERAL ANSWER.

13 SPECIFICALLY IN THIS ONE, AS I RECALL, THIS WAS
14 PROBABLY FOLLOWING THE CONVERSATIONS IN OUR OFFICE, WE BEING
15 ME, JOE GUERRA, AND REBECCA; I DON'T RECALL IF THE MAYOR WAS
16 INVOLVED IN THOSE CONVERSATIONS.

17 Q. DID THE MAYOR REVIEW THE TALKING POINTS?

18 A. YES. WE WOULD SEND IT TO HIM IN ADVANCE OF THE
19 COUNCIL MEETING, AND IF HE HAD THOUGHTS OR QUESTIONS OR
20 REVISIONS, HE WOULD SEND THEM BACK, OR SOMETIMES WOULD JUST
21 MARK A TEXT AND TAKE IT FROM THERE.

22 Q. OKAY. SO LOOKING AT THESE TALKING POINTS, IF WE GO
23 TO PAGE TWO OF THE ATTACHMENT, WHICH IS THE THIRD PAGE OF
24 DOCUMENT, THE BATES NUMBER ENDS IN 341. ARE YOU THERE?

25 A. YES, SIR.

26 Q. THERE'S A TALKING POINT THAT READS:

27 NOW WE HAVE THE OPPORTUNITY TO REMEDY THE
28 CURRENT SITUATION AND ACHIEVE THOSE GOALS.

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1 AND THE FIRST BULLETED ITEM BENEATH THAT SAYS,
2 "WITHOUT RAISING RATES FOR OUR RESIDENTS."
3 CORRECT?

4 A. CORRECT.

5 Q. HOW IS IT POSSIBLE TO PAY NORCAL \$11.25 MILLION
6 WITHOUT RAISING RATES FOR RESIDENTS? WHERE DOES THE MONEY
7 COME FROM?

8 A. ULTIMATELY, THE RATEPAYERS PAY ALL THE COSTS OF
9 PROVIDING THE SERVICE. AS THE CITY IS MOVING TOWARD A FULL
10 COST RECOVERY MODEL FOR GARBAGE SERVICES, THE RATES WERE
11 INCREASED TO COVER ALL ASPECTS OF GARBAGE SERVICE. MY
12 RECOLLECTION OF WHAT THE MAYOR MEANT ABOUT WITHOUT RAISING
13 RATES WAS THERE WAS NO ASSOCIATED RATE INCREASE AT THIS TIME

14 NECESSARY TO PAY THE COST OF THIS CONTRACT AMENDMENT AND A
15 COMBINATION OF PREVIOUS RATE INCREASES AND ANTICIPATED
16 SCHEDULED RATE INCREASES.

17 Q. SO THAT COULD ONLY BE THE CASE IF THE RATES HAD
18 BEEN RAISED PREVIOUSLY IN ANTICIPATION OF THIS AMENDMENT,
19 CORRECT?

20 A. THE RATES WERE INCREASED IN 2003 AND 2004 TO BRING
21 THE CITY'S GARBAGE SERVICE TO FULL COST RECOVERY MODE. AND
22 THERE WERE SUFFICIENT FUNDS IN THE GARBAGE FUND AT THIS TIME
23 TO NOT REQUIRE AN IMMEDIATE RATE INCREASE TO COVER THE COST
24 OF THIS CONTRACT.

25 Q. BUT LOOK. WHEN THE RATES WERE INCREASED NINE
26 PERCENT IN 2003, WHAT WAS THE PURPOSE OF THAT RATE INCREASE
27 ACCORDING TO THE MAYOR'S OFFICE? WHAT WAS THE MAYOR'S
28 POSITION ON THE PURPOSE OF THAT RATE INCREASE?

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1 A. THE MAYOR'S PURPOSE WAS TO BRING --

2 Q. NOT HIS PURPOSES, HIS POSITION.

3 A. IT WOULD BE PART OF THE FULL COST RECOVERY AND
4 SUPPORTING THE STAFF'S RECOMMENDATION TO DO THAT, MOVING
5 TOWARD FULL COST RECOVERY.

6 Q. WHEN YOU TALK ABOUT FULL COST RECOVERY, WAS PAYING

7 NORCAL AN ADDITIONAL \$11 MILLION ONE OF THE COSTS THAT WAS
8 GOING TO BE RECOVERED BY THE 2003 NINE PERCENT RATE
9 INCREASE?

10 A. AND IN CORRESPONDENCE, E-MAILS THAT JOE GUERRA HAD
11 ISSUED TO CITY STAFF --

12 Q. I'M NOT ASKING YOU WHAT HE ISSUED TO CITY STAFF.
13 I'M ASKING YOU ABOUT THE MAYOR'S POSITION.

14 A. THE MAYOR'S POSITION WAS FOR FULL COST RECOVERY,
15 THAT WE COULDN'T INCREASE RATES FOR ANTICIPATED LABOR COSTS
16 BECAUSE THERE WAS NO EXECUTED CONTRACT OR CONTRACT
17 AMENDMENT.

18 Q. SO IF IT DIDN'T HAVE ANYTHING TO DO WITH THE \$11
19 MILLION PAYMENT TO NORCAL THE FOLLOWING YEAR, WOULDN'T THAT
20 MEAN THAT WHEN THE CONTRACT WAS AMENDED AND THE \$11 MILLION
21 PAYMENT WAS APPROVED, THAT WOULD REDUCE COST RECOVERY,
22 RIGHT?

23 A. IT WOULD BE ONE MORE COST TO THE GARBAGE FUND THAT
24 RATES WOULD HAVE TO RECOVER OVER TIME, YES.

25 Q. IN OTHER WORDS, THE MONEY EITHER COMES FROM THE
26 RATEPAYERS OR THE GENERAL FUND.

27 A. RIGHT, AND WE TRY TO MAKE FULL COST RECOVERY, SO
28 THE RATEPAYERS PAY THE COSTS, YES.

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1 Q. DID YOU WORK ON THE MAYOR'S MEMO TO THE COUNCIL
2 ABOUT THE RATE INCREASE IN MAY OF 2003?

3 A. I DON'T RECALL. IT'S QUITE POSSIBLE I DID, BUT I
4 WOULD HAVE TO SEE --

5 Q. LET'S SEE IF I CAN LOCATE THAT FOR YOU.

6 I'M NOT SURE IF THE MAYOR WROTE A MEMO. DO YOU
7 RECALL WHETHER HE WROTE A MEMO ON THAT SUBJECT?

8 A. IT'S POSSIBLE HE DID NOT, BECAUSE I BELIEVE THAT
9 THE RATE INCREASE WAS PART OF THE OVERALL BUDGET PROCESS IN
10 SPRING 2003. RATES AND CHARGES USUALLY ARE.

11 I DON'T HAVE A SPECIFIC RECOLLECTION OF A MEMO
12 FROM THE MAYOR --

13 Q. HOLD ON A SECOND. RATES ARE USUALLY RAISED IN
14 DECEMBER OF EACH YEAR, NOT MAY?

15 A. RATES AND CHANGES --

16 Q. RATES FOR GARBAGE SERVICE. WASN'T THERE A SEPARATE
17 INCREASE IN DECEMBER OF '02?

18 A. THERE WAS. I THINK THAT WAS OUT OF SEQUENCE IN THE
19 NORMAL PRACTICE FOR THE CITY.

20 Q. THE NORMAL PRACTICE IS TO RAISE RATES IN THE
21 SPRING?

22 A. TO CONSIDER RATES, RATE INCREASES IN THE CONTEXT OF
23 THE OVERALL BUDGET, WHICH IS DEALT WITH IN THE SPRING.

24 Q. IS IT NORMALLY DONE IN 12-MONTH CYCLES?

25 A. NORMALLY, ALTHOUGH IT'S NOT A REQUIREMENT TO DO IT
26 THAT WAY.

27 Q. IT'S NOT WHAT?

28 A. NOT NECESSARILY A REQUIREMENT --

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1 Q. THEY CAN RAISE RATES EVERY WEEK IF THEY WANTED TO?

2 A. IF THERE WAS JUSTIFICATION FOR DOING SO.

3 Q. ISN'T IT TRUE THAT THE PUBLIC JUSTIFICATION FOR THE
4 RATE IN MAY 2003, THE NINE PERCENT RATE HIKE, WAS TO
5 INCREASE COST RECOVERY AND TO BUILD UP A RESERVE?

6 A. I BELIEVE THOSE WERE THE PRINCIPAL REASONS, AS I
7 RECALL, FROM THE ADMINISTRATIVE RECOMMENDATION.

8 Q. AND THERE WAS NOTHING MENTIONED ABOUT INCREASING
9 RATES TO PAY FOR ADDITIONAL LABOR COSTS FOR EITHER NORCAL OR
10 ITS SUBCONTRACTOR, RIGHT?

11 A. THAT IS CORRECT.

12 Q. SO LOOKING BACK ON THIS TALKING POINT THAT SAYS
13 THAT YOU CAN PAY NORCAL \$11.25 MILLION WITHOUT RAISING RATES
14 FOR OUR RESIDENTS, WOULD YOU SAY TODAY THAT'S A COMPLETELY
15 ACCURATE, NON-MISLEADING STATEMENT?

16 A. I WOULD SAY IT'S AN INCOMPLETE STATEMENT.

17 Q. IN WHAT WAY?

18 A. THAT IF THE, WITH THE ADDITIONAL LABOR COST
19 ASSOCIATED WITH THE NORCAL CONTRACT, IT BECOMES A COST THAT
20 NEEDS TO BE RECOVERED ULTIMATELY FROM RATEPAYERS OVER TIME.
21 THERE WAS NO RECOMMENDATION OR NEED TO RAISE RATES IN THE
22 CONTEXT OF THE CONTRACT AMENDMENT IN FALL OF 2004. BUT WHEN
23 RATES WERE REVIEWED IN SPRING 2005, 2006, AND LONGER, THEY
24 WOULD BE AMONG THE FACTORS THAT WOULD BE CONSIDERED FOR A
25 RATE AND COST RECOVERY.

26 Q. ISN'T IT TRUE AN ADDITIONAL FACT THAT'S OMITTED
27 FROM THE TALKING POINTS IS THAT THE RATE HIKE IN 2003
28 ALREADY HAD BUILT INTO THAT A COMPONENT TO COVER THE

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1 AMENDMENT IN THE EVENT THE COUNCIL APPROVED IT?

2 A. THE STATED REASON FOR THE RATE INCREASE THAT WAS
3 OFFERED BY THE ADMINISTRATION, AND THAT MADE PERFECT SENSE
4 TO ME THEN AND NOW, IS THAT THERE WERE A VARIETY OF FACTORS
5 NECESSARY TO INCREASE RATES, AND DID IT IN TWO BITES OVER
6 TWO YEARS OF NINE PERCENT. THE FACT THAT THERE WAS NO
7 EXECUTED LABOR AGREEMENT WITH CWS AND THE FACT THAT THERE
8 WAS NO CONTRACT AMENDMENT BETWEEN NORCAL AND THE CITY MEANT
9 THAT THERE ARE NO BASES FOR INCREASED RATES OR INCREASED

10 LABOR COSTS AT THAT TIME.

11 Q. AN ESTIMATED INCREASED LABOR COST, THOSE NUMBERS
12 WERE PLUGGED INTO THE NINE PERCENT RATE INCREASE, WEREN'T
13 THEY?

14 A. I DON'T KNOW THAT FOR A FACT.

15 Q. ALL RIGHT. DID YOU LEARN THAT SOMETIME AFTER 2003
16 THAT THAT WAS THE CASE?

17 A. I RECALL SOME E-MAIL IN EARLY 2003 WHERE JOE GUERRA
18 WAS SUGGESTING THAT PROJECTED LABOR COSTS FOR THE CWS NORCAL
19 AGREEMENT MIGHT HAVE A BEARING FOR RATE INCREASES, BUT THAT
20 WAS THE POSITION JOE GUERRA HAD.

21 Q. THIS \$11.25 MILLION PAYMENT, THIS WAS REALLY ABOUT
22 BAILING OUT NORCAL FROM A LOW BID AND NOT ABOUT GETTING THE
23 WORKERS ADDITIONAL MONEY, RIGHT?

24 A. AT ITS HEART IT'S ABOUT MAKING SURE THE PEOPLE WHO
25 ARE DOING THE WORK ARE PAID PREVAILING WAGE.

26 Q. FIRST OF ALL, PREVAILING WAGE AT THAT TIME DIDN'T
27 APPLY TO MRF WORKERS, RIGHT?

28 A. BUT IT WAS A COUNCIL POLICY THAT LATER ASKED STAFF

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1 TO LOOK AT TO CORRECT AN OVERSIGHT THEY FELT SHOULD BE
2 CORRECTED.

3 Q. THEY ASKED THE STAFF TO LOOK AT IT; THEY DIDN'T
4 AMEND IT AT THAT TIME, RIGHT?

5 A. THEY FINALLY AMENDED THIS IN 2004 WHEN THEY
6 APPROVED THE CONTRACT AMENDMENT.

7 Q. YOUR VIEW IS BY APPROVING THE CONTRACT AMENDMENT,
8 THEY WERE EFFECTIVELY CALCULATING THE PREVAILING WAGE POLICY
9 OF THE CITY OF SAN JOSE REGARDING MRF WORKERS?

10 A. IN EFFECT, YES.

11 Q. WHAT ABOUT MRF WORKERS EMPLOYED BY OTHER
12 CONTRACTORS?

13 A. UH -- BEFORE THE COUNCIL THIS TIME WAS THE CONTRACT
14 AMENDMENT WITH NORCAL.

15 Q. DID YOU KNOW THAT THE ORIGINAL CONTRACT WITH NORCAL
16 PROVIDED THAT PAYMENTS TO THE SUBCONTRACTOR, CWS, WERE THE
17 SOLE RESPONSIBILITY OF NORCAL AND NOT THE CITY?

18 A. UH -- I LEARNED THAT CONCEPT IN REVIEW OF THE
19 DOCUMENTS AND QUESTIONS.

20 Q. RIGHT. AND SO THE ISSUE WAS NOT WHETHER THE
21 WORKERS WERE GOING TO GET THE MONEY, BECAUSE THEY HAD BEEN
22 GETTING THIS MONEY SINCE 2002, TRUE?

23 A. AS I RECALL, THE WORK STOPPAGE THAT OCCURRED IN
24 2003 WAS IN OAKLAND, AND WORKERS HAD NOT BEEN PAID
25 BECAUSE OF A DISPUTE BETWEEN CWS AND NORCAL.

26 Q. WHY DO YOU THINK THAT'S THE CASE?

27 A. I CAN'T SPECULATE. THAT WOULD BE BETWEEN NORCAL OR
28 CWS, WHICH LED TO MEDIATION EFFORTS THROUGH THE MAYOR'S

1 OFFICE.

2 Q. LET ME SEE IF I CAN REFRESH YOUR UNDERSTANDING.
3 WASN'T THE WORK STOPPAGE, THE ONE-DAY WORK STOPPAGE IN 2003,
4 ABOUT CWS'S REFUSAL TO SIGN A NEW COLLECTIVE BARGAINING
5 AGREEMENT, NOT ABOUT PAYMENT OF SALARY OR WAGES AND BENEFITS
6 TO WORKERS?

7 A. THAT'S -- MY UNDERSTANDING OF WHAT THE WORK
8 STOPPAGE WAS ABOUT IS THERE WAS, THE WORKERS OF CWS HAD BEEN
9 WORKING WITHOUT GETTING THE, WITHOUT AN EXECUTED CONTRACT,
10 AND NOT HAVING THE WAGES THAT THE AGREEMENT BETWEEN CWS AND
11 TEAMSTERS SUGGESTED THEY SHOULD BE PAID.

12 Q. IT WAS ABOUT A NEW AGREEMENT, NOT ABOUT NOT GETTING
13 EXISTING WAGES AND BENEFITS, RIGHT?

14 A. I THINK IT WAS AN ORAL AGREEMENT THAT CWS HAD
15 ENTERED IN WITH THE TEAMSTERS IN? -- 2, I'M FUZZY ON THE
16 DATES -- AND THAT HAD NOT BEEN EXECUTED UNTIL THE MIDDLE OF
17 2003.

18 Q. RIGHT. AFTER THEY GOT SOME ASSURANCES THAT THEY
19 WOULD BE COMPENSATED FOR THE EXTRA LABOR COST, RIGHT?

20 A. BUT THAT WAS A POSITION THAT CWS INDICATED IN ITS

21 CORRESPONDENCE TO THE MAYOR'S OFFICE, THAT THEY WERE
22 EXPECTING COMPENSATION FROM NORCAL TO PAY ADDITIONAL LABOR
23 COSTS.

24 Q. RIGHT. AT SOME POINT DID YOU LEARN THAT NORCAL HAD
25 OBLIGATED ITSELF TO REIMBURSE CWS FOR THESE EXTRA LABOR
26 COSTS?

27 A. IN THE GRAND JURY REPORT OF 2004 -- 2005, EXCUSE ME
28 -- THERE WAS REFERENCE TO AN AGREEMENT BETWEEN CWS AND

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1 NORCAL THAT WAS NOT SHARED WITH THE CITY UNTIL A COUPLE OF
2 YEARS LATER, SEVERAL YEARS LATER.

3 Q. HOW MUCH LATER?

4 A. SEVERAL YEARS LATER.

5 Q. SO IF THERE WERE SUCH AN AGREEMENT IN PLACE,
6 WHEREBY NORCAL WAS OBLIGATED TO REIMBURSE CWS FOR THE EXTRA
7 LABOR COST, WOULDN'T THE REAL ISSUE BE AT THE TIME OF THE
8 COUNCIL VOTE WHO SHOULD BEAR THE BURDEN OF THESE EXTRA LABOR
9 COSTS; NORCAL, WHO HAD SIGNED A CONTRACT AGREEING TO ONLY BE
10 COMPENSATED A CERTAIN AMOUNT WITH CERTAIN COST OF LIVING
11 ADJUSTMENTS AND NO COMPENSATION FOR CHANGES IN COLLECTIVE
12 BARGAINING AGREEMENTS, OR THE CITY RATEPAYERS? WASN'T THAT
13 WHAT IT WAS ABOUT?

14 A. WITH BETTER THAN HINDSIGHT, THAT WAS A POLICY
15 DISCUSSION THE CITY COUNCIL SHOULD HAVE HAD. I AGREE.

16 MR. FINKELSTEIN: LET ME SEE IF THE JURORS HAVE
17 SOME QUESTIONS.

18 BY MR. FINKELSTEIN:

19 Q. DID YOU REVIEW THE CITY AUDITOR'S REPORT BACK IN
20 2000 ISSUED IN CONNECTION WITH THIS PROPOSAL?

21 A. I DON'T THINK SO. JUST IN GENERAL THERE'S A VOLUME
22 OF PAPER THAT COMES TO THE CITY COUNCIL --

23 MR. FINKELSTEIN: I UNDERSTAND.

24 ANY OTHER QUESTIONS?

25 BY MR. FINKELSTEIN:

26 Q. DID YOU TALK TO THE MAYOR ABOUT ANY OF THESE ISSUES
27 AFTER THE INDEPENDENT INVESTIGATOR'S REPORT WAS RELEASED?

28 A. UH -- THAT WAS IN DECEMBER, I BELIEVE, LAST YEAR?

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1 Q. APPROXIMATELY.

2 A. APPROXIMATELY. IT WAS AT THAT POINT THAT MAYOR
3 GONZALES RETAINED COUNSEL. OR ACTUALLY, HE ALREADY HAD
4 COUNSEL, AND HE ASKED US IN THE OFFICE TO ESSENTIALLY
5 SEPARATE HIS LEGAL MATTERS FROM THE FUNCTIONING OF THE

6 OFFICE.

7 MR. FINKELSTEIN: I'LL CAUTION THE JURORS THE FACT
8 THAT SOMEONE HAS RETAINED COUNSEL IS NOT EVIDENCE OF
9 ANYONE'S GUILT AND SHOULD NOT BE HELD AGAINST ANYONE.

10 JUST GIVE US A MOMENT TO REVIEW OUR NOTES.

11 BY MR. FINKELSTEIN:

12 Q. WE'VE HEARD SOME EVIDENCE ABOUT A FUNDRAISER FOR
13 THE MAYOR IN 2002 AT A STEAKHOUSE IN SAN JOSE. DO YOU
14 RECALL ANYTHING ABOUT THAT?

15 A. NO.

16 Q. OH, BLAKE'S STEAKHOUSE, SORRY. DID YOU ATTEND ANY
17 SUCH FUNDRAISER?

18 A. NO.

19 MR. FINKELSTEIN: MR. VOSSBRINK, THANK YOU VERY
20 MUCH FOR APPEARING TODAY. THE FOREPERSON WILL REMIND YOU OF
21 THE ADMONITION IN A MOMENT. I WANT TO EXPLAIN TO YOU YOUR
22 OBLIGATION AS A WITNESS IN THIS MATTER. YOU'RE FREE TO GO
23 TODAY; WE HAVE NO MORE QUESTIONS AT THIS TIME, BUT YOU'RE
24 NOT EXCUSED. THAT MEANS YOU ARE SUBJECT TO BEING RECALLED
25 DURING THE PENDENCY OF THE INVESTIGATION IN THE EVENT THE
26 GRAND JURY HAS ANY ADDITIONAL QUESTIONS FOR YOU.

27 THE FOREPERSON: I READ THE FULL TEXT OF THE
28 ADMONITION BEFORE. BASICALLY, NOTHING THAT YOU HEARD TODAY,

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1 SAID TODAY, OR SAW TODAY IS TO BE COMMUNICATED TO ANYBODY
2 UNTIL THE TRANSCRIPT OF THIS PROCEEDING IS MADE PUBLIC BY
3 THE COURT.

4 THE WITNESS: I UNDERSTAND.

5 THE FOREPERSON: THANK YOU.

6 MR. FINKELSTEIN: THANK YOU VERY MUCH.

7 IT'S ALMOST NOON.

8 THE FOREPERSON: I WOULD LIKE TO MAKE A DISCLOSURE
9 THAT OCCURRED IN THE COURSE OF ALL THIS. MY
10 EX-SISTER-IN-LAW, THAT IS THE FORMER WIFE OF MY BROTHER, WHO
11 IS A COMMUNICATIONS CONSULTANT, APPARENTLY KNOWS
12 MR. VOSSBRINK. I HAVE NEVER MET HIM OR SPOKEN TO HIM AND
13 HAVE NO BIAS WHATSOEVER IN HEARING THE TESTIMONY AND
14 RESPONDING TO IT.

15 MR. FINKELSTEIN: THANK YOU VERY MUCH.

16 WE HAVE A SHORT WITNESS RETURNING THIS AFTERNOON.
17 AFTER LUNCH, MR. MORALES WILL COME BACK. WE WANT TO ASK HIM
18 ABOUT SOME FOLLOW-UP QUESTIONS, AND THEN WE WILL BE DONE FOR
19 THE DAY. SO PROBABLY HALF AN HOUR OR 45 MINUTES THIS
20 AFTERNOON.

21 TOMORROW MORNING WE WILL HEAR FROM JERRY SILVA,
22 THE CITY AUDITOR WHO PREPARED THE AUDIT. THAT SHOULD
23 CONCLUDE THE TESTIMONY UNLESS THE GRAND JURY HAS ADDITIONAL
24 WITNESSES THEY WANT TO HEAR.

25 A JUROR: THE NAME AMY DEAN HAS BEEN MENTIONED A
26 LOT.

27 MR. FINKELSTEIN: WE UNDERSTAND. SHE IS OUT OF
28 STATE IN CHICAGO, AND WE HAVE NOT BEEN ABLE TO GET HER FOR

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1 THE GRAND JURY.

2 A JUROR: BARB OLSEN IS ANOTHER.

3 MR. FINKELSTEIN: OH, BARBARA ZEITMAN-OLSEN. WE
4 COULD CALL HER; I'M NOT SURE WHAT SHE WOULD ADD.

5 A JUROR: SHE SEEMS TO KEEP COMING UP.

6 MR. FINKELSTEIN: SHE WAS EMPLOYED ON BEHALF OF
7 EITHER NORCAL OR CWS, I DON'T KNOW WHICH, TO LOBBY FOR THEM,
8 BUT I'M NOT SURE THAT WOULD ADD A LOT. IF YOU WANT HER, WE
9 CAN TRY TO GET HER. I'M NOT SURE IF IT'S WORTH WAITING FOR
10 THAT.

11 A JUROR: WOULD REBECCA DISHOSKI SHED LIGHT ON
12 THIS?

13 MR. FINKELSTEIN: WE'RE NOT SURE. WE HAVE BEEN
14 SORT OF PICKING WITNESSES BASED ON DOCUMENTS THAT WE HAVE,
15 AND OUR CONCERN, AS YOU'VE SEEN IN A NUMBER OF WITNESSES, IF
16 WE DON'T HAVE DOCUMENTS TO SHOW THEM, THEY ARE NOT ABLE TO

17 GIVE US A LOT OF SPECIFIC RECOLLECTION ABOUT WHAT HAPPENED.
18 SO -- ANYONE ELSE? YOU CAN THINK ABOUT IT OVER
19 LUNCH.

20 THE FOREPERSON: LET US RECESS UNTIL 1:30.
21 (THE LUNCHEON RECESS WAS TAKEN.)
22
23
24
25
26
27
28

SUE HERFURTH, CSR #9645

2139

1 SAN JOSE, CALIFORNIA

MAY 16, 2006

2

3

AFTERNOON SESSION:

4

THE FOREPERSON: LET THE RECORD SHOW ALL 19 JURORS

5

ARE PRESENT. I CALL THIS MEETING TO ORDER.

6

ROBERT MORALES,

7

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

8

AS FOLLOWS:

9 MR. FINKELSTEIN: MR. MORALES, THANK YOU FOR
10 RETURNING HERE TODAY. THE AIR CONDITIONING IS NOT WORKING,
11 SO IF YOU WANT TO TAKE YOUR JACKET OFF, PLEASE FEEL FREE TO
12 DO SO.

13 I'LL JUST REMIND YOU YOU'RE STILL UNDER OATH; DO
14 YOU KNOW THAT?

15 THE WITNESS: RIGHT.

16 EXAMINATION, RESUMED:

17 BY MR. FINKELSTEIN:

18 Q. MR. MORALES, JUST A COUPLE MORE QUESTIONS FOR YOU.
19 LET'S START WITH THE ORIGINAL AWARD OF THE NORCAL AGREEMENT
20 WITH THE CITY BACK IN 2000. DO YOU RECALL THAT?

21 A. YES.

22 Q. AND I THINK WE PREVIOUSLY SHOWED YOU EXHIBIT 6,
23 WHICH IS YOUR LETTER TO MAYOR GONZALES OF OCTOBER 3, 2000.
24 DO YOU RECALL THAT LETTER?

25 A. YES, SIR.

26 Q. NOW, IN THE LETTER YOU STATE:

27 DEAR MAYOR GONZALES, IN ACCORDANCE WITH YOUR
28 REQUEST, I'M EXPLAINING IN THIS LETTER IN MORE

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2 NORCAL WASTE SYSTEMS, INC.

3 CAN YOU SEE THAT FROM WHERE YOU ARE?

4 A. YES, SIR.

5 Q. SO MY QUESTION IS WHAT REQUEST WERE YOU REFERRING
6 TO IN YOUR LETTER OF OCTOBER 3, 2000?

7 A. (NO RESPONSE.)

8 Q. WHEN YOU SAID:

9 DEAR MAYOR GONZALES, IN ACCORDANCE WITH YOUR
10 REQUEST, I AM EXPLAINING IN THIS LETTER IN MORE
11 DETAIL MY CONCERNS --

12 A. WHAT I RECALL ABOUT THIS IS THAT PRIOR TO THAT I
13 HAD A CONVERSATION WITH THE MAYOR AND HE WANTED TO KNOW FROM
14 ME WHAT WERE THE ISSUES OUTSTANDING, YOU KNOW, THAT I HAVE
15 CONCERNS OVER. THE NEW VENDORS COMING INTO THE CITY, THE
16 NEW COMPANY COMING INTO THE CITY, SO I SENT HIM THIS LETTER
17 EXPLAINING TO HIM ABOUT THE PROBLEM THAT WE'RE HAVING WITH
18 CALIFORNIA WASTE SOLUTIONS.

19 Q. RIGHT. AND WHEN DID YOU TALK TO THE MAYOR IN
20 RELATION TO THE DATE OF THIS LETTER?

21 A. I DON'T RECALL EXACTLY, BUT I KNOW IT WAS, YOU
22 KNOW, PRIOR TO OCTOBER 3.

23 Q. SO ARE WE TALKING ABOUT DAYS EARLIER, SOMETHING
24 LIKE THAT?

25 A. PROBABLY.

26 Q. DO YOU RECALL WHAT YOU EXPLAINED TO THE MAYOR WHEN
27 YOU TALKED TO HIM DAYS BEFORE THE OCTOBER 3 LETTER THAT YOU

28 SENT TO HIM, DID YOU TELL HIM ABOUT THE JURISDICTIONAL

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1 PROBLEM BETWEEN ILWU AND TEAMSTERS?

2 A. NOT REALLY. MY MAIN CONCERN, AS I EXPLAINED TO YOU
3 BEFORE, WAS THAT THE WAY THAT I UNDERSTOOD THE ENTIRE EVENT
4 WAS THAT I WASN'T GETTING THE TRUE MESSAGE, THAT THE CITY
5 OFFICIALS AND THE CITY COUNCIL AND EVEN THE MAYOR'S OFFICE
6 UNDERSTOOD THAT MY CONCERN WAS THE 50 EMPLOYEES THAT I HAD
7 WITH CWS, I WANTED THEM TO HAVE A GUARANTEE THAT THEY WERE
8 GOING TO BE HIRED AND THAT THEY WERE GOING TO HAVE THEIR
9 SENIORITY HONORED AND BENEFITS. NEVER ONCE DID I TOLD THE
10 MAYOR OR THE CITY COUNCIL OR THE CITY STAFF THE WORD UNION.

11 WE ALWAYS STAY AWAY FROM THE WORD UNION, AND THE
12 REASON BEING IS BECAUSE WE DIDN'T WANT TO SEND A MESSAGE
13 THAT THEY JUST WANTED TO GET ANOTHER UNION CONTRACT. SO MY
14 CONCERN AS I EXPLAINED TO HIM WAS SECURITY AND RETENTION OF
15 JOBS FOR THE 50 EMPLOYEES THAT I HAD AT WASTE MANAGEMENT. I
16 EARLIER SAID CWS, BUT IT WAS WASTE MANAGEMENT. THEY ARE
17 ALREADY WORKING IN SAN JOSE WITH WASTE MANAGEMENT, AND THAT
18 WAS MY CONCERN, NOT WHETHER THEY WERE IN MY UNION OR NOT.

19 Q. SO YOU WEREN'T CONCERNED ABOUT WHETHER THE

20 TEAMSTERS REPRESENTED THE CWS RECYCLING WORKERS?

21 A. NO, BECAUSE I KNEW THAT EVENTUALLY, IF THEY WERE
22 HIRED BY THE VENDOR AFTER THIS WAS ALL OVER AND THE
23 FRANCHISES WERE AWARDED, THAT BECAUSE I ALREADY HAD
24 REPRESENTATION CARDS FROM THESE WORKERS, THAT EVENTUALLY I
25 WOULD REORGANIZE THEM INTO THE TEAMSTERS.

26 Q. WELL, THAT SAME WEEK AS THIS LETTER, YOU FILED AN
27 NLRB COMPLAINT -- STRIKE THAT. YOU FILED A U-L-P, UNFAIR
28 LABOR PRACTICE CHARGE, OVER CWS' S INTENTION TO RECOGNIZE

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1 I LWU, CORRECT?

2 A. THAT' S CORRECT.

3 Q. AND THE REASON YOU MADE THAT CHARGE IS BECAUSE YOU
4 THOUGHT THE WORKERS SHOULD BE FREE TO PICK THE TEAMSTERS,
5 RIGHT?

6 A. NO, SIR.

7 Q. THAT' S NOT WHY YOU YOU FILED THE CHARGE?

8 A. NO, SIR.

9 Q. WHY DID YOU FILE THE CHARGE?

10 A. I FILED THE CHARGE BECAUSE IT WAS MY UNDERSTANDING
11 BY TALKING TO THE NORCAL EMPLOYER AND ALSO OTHER CITY
12 OFFICIALS THAT IT WAS THE INTENTION OF CALIFORNIA WASTE

13 SOLUTIONS FROM OAKLAND, FROM OAKLAND, TO BRING THEIR OWN
14 WORKERS, AND THAT THAT WAS MY MAIN CONCERN. IF THEY BROUGHT
15 THEIR OWN WORKERS, THAT WOULD MEAN MY 50 EMPLOYEES, MEMBERS,
16 WERE GOING TO BE OUT OF A JOB IF THAT IN FACT TOOK PLACE.
17 THAT'S WHY I FILED THAT.

18 Q. DIDN'T YOU ASK THE COUNCIL ON OCTOBER 10, 2000, TO
19 REQUIRE THE CONTRACTORS TO SIGN NEUTRALITY AGREEMENTS?

20 A. THAT'S CORRECT.

21 Q. AND THE PURPOSE OF A NEUTRALITY AGREEMENT IS SO THE
22 WORKERS CAN EXPRESS A PREFERENCE FOR WHICH UNION THEY WANT
23 BY MEANS OF FILLING OUT A PREFERENCE CARD, RIGHT?

24 A. UH -- THAT'S TRUE, EXCEPT THAT I WANTED TO MAKE
25 SURE THAT THE PEOPLE WHO WERE GOING TO SELECT UNION
26 REPRESENTATION WERE GOING TO BE THE 50 WORKERS THAT I HAD
27 PREVIOUSLY EMPLOYED AT WASTE MANAGEMENT.

28 MY WHOLE STRATEGY WAS TO MAKE SURE THAT MY 50

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1 MEMBERS WHO WERE DOING THOSE JOBS WILL HAVE A JOB, WHOEVER
2 CAME INTO SAN JOSE, THAT THEY WILL HAVE A JOB. THAT WAS MY
3 MAIN CONCERN.

4 Q. MR. MORALES, THE JURISDICTION OF THE NLRB, WHO YOU

5 FILED YOUR CHARGE WITH, IS OVER UNFAIR LABOR PRACTICES AND
6 REPRESENTATION OF WORKERS, CORRECT?

7 A. UH -- COULD BE BOTH.

8 Q. RIGHT. THEY DON'T TELL THE EMPLOYER WHICH WORKERS
9 TO HIRE, DO THEY?

10 A. WELL, NO, THEY DON'T.

11 Q. OKAY. SO FILING THE UNFAIR LABOR PRACTICE CHARGE
12 WITH THE NLRB, THAT DIDN'T HAVE ANYTHING TO DO WITH WHETHER
13 THE EXISTING WORKERS WERE GOING TO BE OFFERED EMPLOYMENT,
14 THAT HAD TO DO WITH HOW CWS' S WORKERS IN SAN JOSE WOULD
15 DETERMINE WHICH UNION REPRESENTED THEM, RIGHT?

16 A. NO, SIR.

17 Q. IT HAD NOTHING TO DO WITH THAT?

18 A. NO, SIR. THE CHARGE WAS TO GET A DECISION FROM THE
19 BOARD THAT THIS EMPLOYER WAS VIOLATING THE SPIRIT OF THE LAW
20 BY BRINGING THEIR OWN UNION WITH THEM. THE WAY THAT THE
21 FRANCHISE AGREEMENT READS, IT DOESN'T CALL FOR A UNION. IT
22 SAYS THEY HAVE POTENTIAL EMPLOYEES. THE WAY THAT THEY HAVE
23 THEIR PLAN WITH THE LONGSHOREMEN AND CWS FROM OAKLAND WAS
24 THAT THEY WERE GOING TO HAVE THEIR LEGAL ARRANGEMENT AND
25 WERE GOING TO COME AND WAVE A UNION CONTRACT. THESE WORKERS
26 WE ARE BRINGING ARE LONGSHOREMEN MEMBERS. SO THAT'S WHY I
27 FILED THE UNFAIR LABOR CHARGE. AND I WANT TO TELL YOU THAT
28 IT WAS ON THE ADVICE OF OUR ATTORNEY. EVERY MOVE THAT WE

1 MADE IN THE ENTIRE TRANSACTION WAS WITH LEGAL
2 REPRESENTATION, AND, YOU KNOW, WE HAPPEN TO HAVE THE LEADING
3 LABOR LAWYER IN THE STATE.

4 Q. NONETHELESS, ARE YOU SUGGESTING TO THE JURY NOW
5 THAT YOU DIDN'T -- IT DIDN'T MATTER TO YOU WHICH UNION
6 REPRESENTED CWS'S WORKERS IN SAN JOSE?

7 A. OF COURSE IT MATTERS TO ME. BUT I KNEW THAT IF I
8 WAS TO FOLLOW THE GUIDELINE OF THE FRANCHISE FOR THE CITY,
9 THAT I CANNOT GO AND DEMAND, YOU KNOW. YOU GOT TO HAVE
10 THESE PEOPLE AND THEY HAVE TO HAVE A TEAMSTER CONTRACT; WE
11 KNOW BETTER THAN THAT. WE'RE GOING THROUGH THE SAME PROCESS
12 NOW IN THE CITY OF SAN JOSE AS I'M SPEAKING TO YOU.

13 Q. THE REASON YOU WANTED A NEUTRALITY AGREEMENT WAS SO
14 THAT THE CWS WORKERS IN SAN JOSE COULD FILL OUT CARDS
15 EXPRESSING A PREFERENCE FOR TEAMSTERS, WHICH WOULD RESULT IN
16 THE TEAMSTERS REPRESENTING THEM; ISN'T THAT TRUE?

17 A. AS LONG AS THEY HIRE THE PRIOR 50 EMPLOYEES. THE
18 ANSWER TO THE QUESTION IS YES, BUT I WANT TO CLARIFY THAT.
19 AS LONG AS THE PEOPLE WHO WERE GOING TO SELECT UNION
20 REPRESENTATION WERE GOING TO BE THE PRIOR EMPLOYEES WHO WERE
21 PERFORMING THOSE JOBS, AS THE CITY FRANCHISE INDICATES, IS
22 FOR RETENTION OF EMPLOYEES.

23 Q. YOU KNEW THE RFP THAT THE CITY ISSUED INCLUDED A

24 REQUIREMENT THAT NEW CONTRACTORS HAD TO OFFER EMPLOYMENT
25 FIRST TO EXISTING WORKERS, RIGHT?

26 A. YES, SIR.

27 Q. SO WHY DID YOU THINK THAT CWS WASN'T GOING TO HONOR
28 THAT?

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1 A. BECAUSE, YOU KNOW, I CANNOT TAKE ANY CHANCES. I
2 LIKE TO REPRESENT MY MEMBERS TO THE BEST OF MY ABILITY, SO
3 EVERY AVENUE THAT I HAVE, AS LONG AS IT'S LEGAL, THE LOCAL
4 UNION WILL TAKE.

5 Q. WHAT REASON DID YOU HAVE TO SUSPECT THAT CWS WAS
6 NOT GOING TO HONOR THAT REQUIREMENT IN THE RFP THAT REQUIRED
7 THEM TO OFFER EMPLOYMENT FIRST TO EXISTING WORKERS?

8 A. THE TEAMSTERS' UNION IN OAKLAND LOCAL 70 HAVE HAD A
9 RELATIONSHIP WITH CWS FOR MANY YEARS BEFORE COMING TO
10 SAN JOSE, AND I KNEW THE REPUTATION. THAT'S THE REASON WHY
11 OUR ATTORNEYS AND THE UNION DECIDED THAT IN ORDER TO DOUBLE
12 PROTECT THE JOBS, THAT WE HAVE TO DO THAT. THAT'S WHY WE
13 DID IT ON THE ATTORNEY'S ADVICE.

14 Q. YES. BUT THE CHARGE THAT WAS FILED WITH THE NLRB
15 CONCERNED DECLARING CWS'S INTENT TO RECOGNIZE THE ILWU UNDER

16 THE EXISTING COLLECTIVE BARGAINING AGREEMENT IN SAN JOSE TO
17 BE UNLAWFUL. THAT WAS THE CHARGE THAT YOU MADE, RIGHT?

18 A. YES.

19 Q. IT WAS NOTHING IN THAT CHARGE ABOUT CWS BEING
20 REQUIRED -- THERE WAS NOTHING IN THE CHARGE THAT YOU MADE TO
21 THE NLRB THAT ASKED THE NLRB TO TELL CWS TO HAVE TO HIRE
22 EXISTING WORKERS, WAS THERE?

23 A. NO, BUT THE CHARGE WAS TO ACCOMPLISH THE FACT THAT
24 YOU CANNOT HAVE A SWEETHEART CONTRACT IN COMING TO A CITY
25 WITH A CONTRACT THAT PERTAINS TO OAKLAND IN TRYING TO MAKE
26 THAT SAME CONTRACT EFFECTIVE IN THE CITY OF SAN JOSE,
27 VIOLATING THE GUIDELINES OF THE RFP FOR THE CITY OF SAN
28 JOSE.

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1 Q. RIGHT. YOUR POSITION WITH THE NLRB WAS THE WORKERS
2 SHOULD HAVE THE RIGHT TO DECIDE WHO REPRESENTED THEM, AND
3 CWS SHOULD HAVE TO NEGOTIATE A NEW AGREEMENT WITH WHOEVER
4 THE WORKERS CHOOSE TO REPRESENT THEM.

5 A. THAT'S CORRECT.

6 Q. SO -- AND ISN'T THAT WHAT YOU WANTED THE MAYOR AND
7 COUNCILMEMBERS TO HELP YOU WITH?

8 A. WELL, AS I SAID BEFORE, OKAY, THE MAIN CONCERN THAT

9 WE HAD WITH THE CITY, WHETHER IT'S SAN JOSE, SAN FRANCISCO,
10 WALNUT CREEK, SUNNYVALE, IS THE PROTECTION OF JOBS IN
11 ACCORDANCE WITH THE RFP. THE UNION MATTER IS A SECONDARY
12 MATTER THAT WE WILL HANDLE WHEN THE AWARDS ARE DONE, AND
13 THIS IS RECOGNIZING THE PROCESS.

14 Q. SO WHAT IS YOUR BEST RECOLLECTION OF WHAT YOU
15 EXPLAINED TO MAYOR GONZALES, BEFORE SENDING OUT THIS OCTOBER
16 3, 2000 LETTER, WAS THE ISSUE BEFORE YOU?

17 A. I THINK I EXPLAINED THAT. IT HAD TO DO WITH THE
18 JOB RETENTION OF THE EXISTING EMPLOYEES. I WANTED, ONCE
19 AGAIN, TO PUT IT IN WRITING TO HIM THAT IT WAS REQUIREMENTS
20 UNDER THE CITY AND I HAD MY DOUBTS THAT THE COMING EMPLOYER
21 HAD NO INTENTIONS OF DOING THAT.

22 Q. OF DOING THAT, YOU MEAN --

23 A. HIRE MY MEMBERS.

24 Q. OFFERING EMPLOYMENT FIRST TO EXISTING WORKERS?

25 A. CORRECT.

26 Q. IS YOUR TESTIMONY YOU SAID NOTHING ABOUT THE
27 TEAMSTERS IN YOUR CONVERSATIONS WITH THE MAYOR?

28 A. NO.

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1 Q. THAT'S NOT YOUR TESTIMONY?

2 A. WELL, AS I EXPLAINED BEFORE, ON PRIOR DAYS I CAME
3 HERE, IF YOU LOOK AT THE OTHER CORRESPONDENCE, I WAS
4 DISAPPOINTED THAT THE MAYOR HAD TAKEN THE POSITION THAT THIS
5 WAS A LABOR ISSUE AND THAT THE ISSUE BELONGED TO, WAS
6 BETWEEN THE UNION, BETWEEN THE LONGSHOREMEN AND TEAMSTERS.
7 AND, AS A MATTER OF FACT, SUBSEQUENT TO THIS LETTER I SENT A
8 LETTER TO THE CITY COUNCIL INDICATING MY FRUSTRATION AND
9 DISAPPOINTMENT WITH THE MAYOR THAT HE WASN'T FOLLOWING -- IN
10 MY OPINION, WAS SUBMITTING A PROPOSAL FOR NORCAL AND CWS
11 THAT DIDN'T MEET THE STANDARDS OF THE CITY FRANCHISE. AND I
12 THINK WE GAVE YOU COPIES OF THESE LETTERS WHERE I EXPRESSED
13 MY FRUSTRATION WITH THE MAYOR.

14 Q. DID YOU TALK TO COUNCILMEMBER CHAVEZ BEFORE THE
15 FIRST VOTE ON THE NORCAL PROPOSAL?

16 A. I DIDN'T HEAR THAT.

17 Q. DID YOU TALK TO COUNCILMEMBER CHAVEZ BEFORE THE
18 FIRST VOTE ON OCTOBER 10, 2000?

19 A. TO BE HONEST WITH YOU, WE TALKED TO, AS I TOLD YOU,
20 MANY PEOPLE. I ALSO HAD THE HELP OF THE LABOR COUNCIL IN
21 SAN FRANCISCO --

22 Q. MY QUESTION WAS --

23 A. NO. I DID NOT, ME PERSONALLY.

24 Q. YOU DIDN'T TALK TO COUNCILMEMBER CHAVEZ?

25 A. NO, NOT THAT I RECALL.

26 Q. NOT THAT YOU RECALL?

27 A. NO. DURING THAT PERIOD OF TIME WE TALKED TO SO
28 MANY PEOPLE. WE TALKED TO THE STAFF, WE TALKED TO MEMBERS

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1 OF THE CITY COUNCIL, WE TALKED TO THE CITY COUNCIL STAFF, WE
2 TALKED TO THE MAYOR'S STAFF. YOU KNOW, WE TALKED TO A LOT
3 OF PEOPLE, ANYBODY WHO WOULD LISTEN TO US WE WOULD TALK TO,
4 JUST LIKE WE'RE DOING RIGHT NOW TO SAN JOSE WITH THE NEW
5 FRANCHISE COMING UP.

6 Q. LET ME ASK YOU MORE SPECIFICALLY, BECAUSE YOU KNOW
7 WE'VE TALKED TO OTHER WITNESSES IN THIS CASE. DID YOU TELL
8 COUNCILMEMBER CHAVEZ BEFORE THE FIRST VOTE ON OCTOBER 10,
9 2000, THAT YOU WERE CONCERNED ABOUT WORKERS BEING
10 REPRESENTED BY ILWU BECAUSE THEIR CONTRACT WAS SO MUCH LOWER
11 THAN THE TEAMSTERS, AND THAT IT WOULD IMPACT THE WAGE
12 EARNINGS STANDARDS?

13 A. I COULD HAVE. I DON'T SPECIFICALLY RECALL WHO I
14 TALKED TO. I TALKED TO SO MANY PEOPLE --

15 Q. MR. MORALES, I GUESS I JUST WANT TO KNOW, DID YOU
16 TELL COUNCILMEMBER CHAVEZ THAT OR NOT BEFORE THE FIRST VOTE.

17 A. I DON'T RECALL, BUT I LIKE TO BE HONEST. IT COULD
18 HAVE HAPPENED. I DON'T SPECIFICALLY RECALL A CONVERSATION
19 WITH HER ONLY.

20 Q. LET ME SEE IF I CAN HELP YOUR RECOLLECTION.

21 A. OKAY.

22 Q. FIRST OF ALL, AS I HEAR YOUR TESTIMONY, YOU DON'T
23 DENY IT, YOU JUST DON'T REMEMBER?

24 A. I DON'T REMEMBER.

25 Q. DO YOU RECALL COUNCILMEMBER CHAVEZ TELLING YOU THAT
26 IT WAS NOT AN ISSUE FOR THE COUNCIL; IT WAS AN ISSUE FOR THE
27 LABOR MOVEMENT?

28 A. PROBABLY.

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1 Q. DO YOU RECALL HER TELLING YOU THAT?

2 A. PROBABLY.

3 Q. WHAT WAS THAT IN RESPONSE TO?

4 A. TO BE HONEST WITH YOU, I DON'T SPECIFICALLY RECALL
5 THAT, YOU KNOW, BUT I'M NOT DENYING IT COULD HAVE HAPPENED.
6 AS I EXPLAINED TO YOU, IT WASN'T ONLY ME, YOU'VE GOT TO
7 UNDERSTAND THAT. MY STAFF, THE PRESIDENT OF THE UNION,
8 LARRY DAUGHERTY, ANOTHER BUSINESS REPRESENTATIVE, JAMES
9 FURGAS, WE'RE ALL OVER CITY HALL. IT WAS THREE OF US
10 TALKING TO DIFFERENT PEOPLE --

11 Q. I UNDERSTAND. MY QUESTION IS MORE FOCUSED THAN

12 THAT. IT SPECIFICALLY RELATES TO A CONVERSATION YOU MAY OR
13 MAY NOT HAVE HAD WITH COUNCILMEMBER CHAVEZ, AND MY QUESTION
14 AGAIN IS, BEFORE THE FIRST VOTE ON THE NORCAL PROPOSAL, DID
15 YOU TELL COUNCILMEMBER CHAVEZ THAT YOU WERE CONCERNED ABOUT
16 THE WORKERS BEING REPRESENTED BY ILWU BECAUSE THEIR CONTRACT
17 WAS SO MUCH LOWER THAN THE TEAMSTERS?

18 A. PROBABLY.

19 Q. AND IT WOULD IMPACT THE WAGE EARNING STANDARDS?

20 A. PROBABLY.

21 Q. DID SHE TELL YOU IN RESPONSE TO THAT THAT THIS WAS
22 NOT AN ISSUE FOR THE COUNCIL, IT WAS AN ISSUE FOR THE LABOR
23 MOVEMENT?

24 A. PROBABLY.

25 Q. WERE YOU UPSET ABOUT HER RESPONSE?

26 A. UH -- I WAS UPSET, NOT ONLY THAT TIME, BUT AT A LOT
27 OF PEOPLE, INCLUDING THE MAYOR.

28 Q. I'M FOCUSED ON ONE PERSON.

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1 A. OKAY. I WAS PROBABLY UPSET. IF I HAD THAT
2 CONVERSATION.

3 Q. RIGHT. AND DID THE WORD GET BACK TO YOU FROM THE
4 LABOR COUNCIL THAT COUNCILMEMBER CHAVEZ WAS UNHAPPY ABOUT

5 YOUR PUSHING HER ON THAT ISSUE?

6 A. NO, THAT'S NOT TRUE.

7 Q. DID YOU DROP IT AT THAT POINT; DID YOU CONTINUE TO
8 TRY TO LOBBY HER ON THIS ISSUE?

9 A. NO, BECAUSE BY THAT TIME, AS I EXPLAINED IN PRIOR
10 MEETINGS BEFORE, THE MAYOR HAD READ INTO THE RECORD THAT
11 THERE WAS GOING TO BE RETENTION OF EMPLOYEES AND THAT OUR
12 MEMBERS WHO HAD THE JOBS WERE GOING TO BE RETAINED. SO I
13 FIGURED AT THE OCTOBER 10 MEETING IT WAS READ INTO THE
14 RECORD AND THE MAYOR MADE A STATEMENT THAT OUR WORKERS, OUR
15 MEMBERS WERE GOING TO HAVE THEIR JOBS. SO, TO ME, THAT WAS
16 MY SATISFACTION.

17 Q. LET ME ASK YOU THIS, MR. MORALES: IF YOU PROBABLY
18 TOLD COUNCILMEMBER CHAVEZ THAT YOU WERE CONCERNED ABOUT THE
19 WORKERS BEING REPRESENTED BY THE ILWU BECAUSE THEIR CONTRACT
20 WAS SO MUCH LOWER THAN THE TEAMSTERS, IS THERE ANY REASON
21 YOU WOULDN'T HAVE ALSO TOLD MAYOR GONZALES ABOUT THAT
22 CONCERN?

23 A. I PROBABLY DID IN TALKING TO THE, ABOUT THE
24 RETENTION AND, YOU KNOW, THE OTHER CONDITIONS. I PROBABLY
25 DID.

26 Q. SO YOU TOLD HIM BEFORE THE VOTE THAT YOU WERE
27 CONCERNED ABOUT THE WORKERS BEING REPRESENTED BY THE ILWU
28 INSTEAD OF TEAMSTERS BECAUSE THEY HAD A LOWER CONTRACT?

1 A. PROBABLY.

2 Q. NOW, I THINK IN FEBRUARY OF 2003 THERE WAS A
3 ONE-DAY STRIKE AT CWS. DO YOU RECALL THAT?

4 A. YES, SIR.

5 Q. AND WHAT WAS THE REASON FOR THE STRIKE; DID THAT
6 HAVE TO DO WITH CWS NOT SIGNING AN AGREEMENT, A NEW
7 COLLECTIVE BARGAINING AGREEMENT?

8 A. YES.

9 Q. DURING -- YOU HAD NEGOTIATIONS WITH CWS TRYING TO
10 RESOLVE THIS NEW COLLECTIVE BARGAINING AGREEMENT, CORRECT?

11 A. YES.

12 Q. JOE GUERRA ACTED AS A MEDIATOR?

13 A. AT THE END HE DID, BUT PRIOR TO THAT WE HAD MANY
14 MEETINGS.

15 Q. DURING THE COURSE OF YOUR NEGOTIATIONS WITH CWS,
16 DID YOU EVER TELL DAVID DUONG OR ANYONE ELSE FROM CWS --
17 THIS IS DURING THE 2003 NEGOTIATIONS, THIS WOULD HAVE BEEN
18 THE FIRST HALF OF 2003, CORRECT?

19 A. YES, SIR.

20 Q. THE STRIKE WOULD HAVE BEEN IN FEBRUARY '03, THE NEW
21 CONTRACT WOULD HAVE BEEN SIGNED IN JUNE OR JULY OF '03.

22 A. YES.

23 Q. DURING THE NEGOTIATIONS LEADING UP TO THIS NEW
24 COLLECTIVE BARGAINING AGREEMENT, DID YOU EVER TELL DAVID
25 DUONG THAT YOU DID NOT UNDERSTAND WHY HE WOULDN' T AGREE TO A
26 NEW TEAMSTER' S CONTRACT; IT WASN' T HIS MONEY, THE CITY WAS
27 GOING TO PAY CWS BACK?

28 A. I DON' T RECALL THAT. I KNEW MY POSITION WITH DAVID

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1 DUONG ALL ALONG WAS, LOOK, YOU CAME INTO THE CITY, YOU GOT A
2 CONTRACT FROM THE CITY, YOU' RE OBLIGATED TO HONOR THE
3 COLLECTIVE BARGAINING AGREEMENT THAT YOU NEGOTIATE WITH THE
4 TEAMSTERS. WHAT YOU DO WITH THE CITY, THAT' S YOUR BUSINESS,
5 BECAUSE IN MY OPINION, I TOLD HIM, I THINK NORCAL SHOULD
6 GIVE YOU THE MONEY TO PAY FOR THIS CONTRACT, BECAUSE THEY
7 ARE THE ONES WHO OWN THE FRANCHISE, AND YOU' RE THEIR
8 SUBCONTRACTOR.

9 SO THAT WAS MY POSITION.

10 Q. RIGHT. DID YOU EVER SAY TO CWS OR NORCAL, IN AN
11 EFFORT TO GET THIS NEW CONTRACT, LOOK, THE CITY IS GOING TO
12 REIMBURSE YOU ANYWAY, SO WHY BE DIFFICULT ABOUT THIS?

13 A. I DON' T RECALL THAT.

14 Q. DO YOU DENY THAT YOU SAID THAT?

15 A. YOU KNOW, I DON' T RECALL, BECAUSE MY POSITION ALL

16 ALONG WAS THAT IT WAS NORCAL, IN MY OPINION ALL ALONG IT WAS
17 NORCAL'S RESPONSIBILITY TO COME UP WITH WHATEVER MONIES THEY
18 HAVE TO GIVE DAVID DUONG AND CWS IN ORDER FOR THEM TO
19 NEGOTIATE THE CONTRACT.

20 IF THE CITY, YOU KNOW, HAD AN ARRANGEMENT WITH
21 NORCAL OR CWS OR ANYTHING LIKE THAT, YOU HAVE TO UNDERSTAND
22 THAT THE UNION DOESN'T PARTICIPATE IN THOSE NEGOTIATIONS
23 WHEN IT COMES DOWN TO FINANCIAL ARRANGEMENTS. THE ONLY
24 THING WE DO IS NEGOTIATE A CONTRACT. AND UP TO THIS DATE,
25 YOU KNOW, MY OPINION WAS, HAS ALWAYS BEEN, NORCAL SHOULD
26 HAVE PAID FOR IT.

27 Q. I UNDERSTAND. DIDN'T YOU ALSO THINK, WOULDN'T YOU
28 HAVE LIKED TO SEE THE CITY PAY FOR IT AND MAKE IT EASIER FOR

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1 YOU TO GET MONEY OUT OF NORCAL AND CWS?

2 A. YES, THAT WOULD HAVE BEEN EASY.

3 Q. DID JOE GUERRA, DURING THE TIME HE WAS MEDIATING
4 THIS NEGOTIATION, EVER TALK TO YOU ABOUT WHETHER OR NOT THE
5 CITY MIGHT BE WILLING TO REIMBURSE?

6 A. THE ONLY THING THAT I RECALL, AS I TOLD YOU BEFORE,
7 IS THAT WE WENT TO THE CITY WITH THE PARTIES INVOLVED, AND

8 ALL ALONG I FELT THAT THEY WERE LOBBYING TO MAKE SURE THAT
9 THE CITY WILL COME UP WITH AT LEAST \$1.9 MILLION IN ORDER
10 TO --

11 Q. PAY FOR --

12 A. HELP CWS PAY FOR AT LEAST PART OF THE CONTRACT.
13 WHAT WAS GOING TO HAPPEN AFTER THAT, IT'S UP TO THEM.

14 Q. RIGHT. BUT MY QUESTION IS, DID MR. GUERRA, DURING
15 YOUR MEETINGS WITH HIM REGARDING THE NEGOTIATION WITH CWS,
16 EVER EXPRESS TO YOU THE BELIEF THAT THE CITY WAS GOING TO
17 COME UP WITH SOME ADDITIONAL MONEY TO PAY FOR ALL OR SOME OF
18 THESE ADDITIONAL LABOR COSTS?

19 A. YES.

20 Q. WHEN DID HE TELL YOU THAT?

21 A. DURING THE NEGOTIATION BETWEEN CWS AND, YOU KNOW,
22 IN EARLY 2003 WHEN WE WERE IN NEGOTIATIONS THAT THE CITY WAS
23 GOING TO COME OUT WITH, AS I TOLD YOU, ABOUT \$2 MILLION WAS
24 MY UNDERSTANDING, AND THAT WAS THERE AND IT WAS VERY
25 DIFFICULT. IT TOOK A LONG TIME.

26 Q. DID MR. GUERRA EVER MENTION WHETHER OR NOT THE CITY
27 WAS GOING TO IMPLEMENT A RATE HIKE TO HELP RAISE THIS
28 ADDITIONAL MONEY FOR THE ADDITIONAL LABOR COST?

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1 A. HE MAY HAVE. THE ONLY THING I KNOW IS THEY WERE
2 GOING TO HELP, YOU KNOW, WITH THE RECYCLING OPERATION,
3 BECAUSE THEY -- APPARENTLY, THE NUMBERS WERE NOT THERE.

4 Q. WHAT DO YOU MEAN, THE NUMBERS WERE NOT THERE?

5 A. FOR THIS EMPLOYER TO IMPROVE THE WAGES AND WORK
6 CONDITIONS AND BENEFITS FOR MY MEMBERS. YOU HAVE TO
7 UNDERSTAND WHEN CWS TOOK OVER THE OPERATION HERE, THE
8 CONTRACT BETWEEN THE UNION AND THE PRIOR EMPLOYER, WASTE
9 MANAGEMENT, HAD EXPIRED. SO WE WERE NEGOTIATING FOR A NEW
10 COLLECTIVE BARGAINING AGREEMENT, AND THEREFORE, YOU KNOW, WE
11 HAVE TO GO AND NEGOTIATE WITH DUONG AND TRY TO IMPROVE THE
12 AGREEMENT AND THE BENEFITS.

13 Q. RIGHT. BUT YOU WERE GETTING AT LEAST THE EXISTING
14 WAGES AND BENEFITS WHEN DUONG TOOK OVER THE OPERATION,
15 RIGHT?

16 A. YES, SIR.

17 Q. SO THE DISPUTE WAS OVER THE NEW CONTRACT GOING
18 FORWARD, CORRECT?

19 A. THAT'S CORRECT.

20 Q. THAT'S WHAT THE NEGOTIATION IN 2003 WAS ABOUT?

21 A. YES, SIR.

22 Q. AND CWS'S POSITION WAS THEY COULDN'T FINANCIALLY
23 PAY FOR ADDITIONAL WAGES AND BENEFITS, RIGHT?

24 A. THAT'S CORRECT.

25 Q. THAT'S WHY YOU WERE HOPING THE CITY WOULD PAY SOME
26 ADDITIONAL MONEY --

27 A. OR NORCAL.

28 Q. OR NORCAL.

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1 A. BELIEVE IT OR NOT, MY POSITION ALL ALONG WITH THE
2 FOLKS FROM NORCAL, YOU BROUGHT HIM INTO THE FRANCHISE, YOU
3 SHOULD PAY FOR WHATEVER YOU NEGOTIATED.

4 Q. DID YOU EVER LEARN THAT NORCAL HAD OBLIGATED ITSELF
5 TO REIMBURSE CWS FOR THE ACTUAL LABOR COST?

6 A. MY UNDERSTANDING WAS THAT NORCAL WAS THOROUGHLY
7 RESPONSIBLE FOR THAT, EXCEPT THAT WHEN YOU TALKED TO THEM,
8 THEY WANTED TO DIVORCE THEMSELVES FROM CWS, AND I WOULDN' T
9 LET THEM.

10 Q. DID YOU HAVE THE ADDENDUM WHERE THEY SIGNED AN
11 AGREEMENT SAYING NORCAL WOULD REIMBURSE CWS FOR THE EXTRA
12 LABOR COST?

13 A. I MAY HAVE.

14 Q. WHEN?

15 A. DURING, YOU KNOW, DURING THE ENTIRE PROCESS.

16 Q. WAS THAT DURING THE NEGOTIATIONS ON THE FIRST HALF
17 OF 2003?

18 A. YES.

19 MR. FINKELSTEIN: LET US CHECK OUR NOTES FOR A
20 MINUTE.

21 Q. IN YOUR OCTOBER 3, 2000 LETTER TO MAYOR GONZALES,
22 YOU MADE REFERENCE TO A POSSIBLE VIOLATION OF A MEMORANDUM
23 OF UNDERSTANDING BETWEEN NORCAL AND LOCAL 350?

24 A. YES, SIR.

25 Q. WHAT WAS THAT MEMORANDUM OF UNDERSTANDING ABOUT
26 AGAIN?

27 A. THE MEMORANDUM OF UNDERSTANDING THAT WE SIGNED WITH
28 NORCAL NOT ONLY PROVIDED FOR DRIVERS AND MECHANICS, WHICH

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1 WERE THE ONES THAT NORCAL, THE EMPLOYEES THAT THEY WERE
2 GOING TO TAKE. BUT IN FACT IT REPRESENTED A MEMORANDUM OF
3 UNDERSTANDING FOR ALL OF THE ASPECTS OF THE FRANCHISE, TO
4 INCLUDE THE DUTIES THAT CWS WAS GOING TO ASSUME.

5 Q. SO THAT MEMORANDUM OF UNDERSTANDING SAID THAT
6 NORCAL WOULD RECOGNIZE THE TEAMSTERS?

7 A. NO, SIR.

8 Q. AS LONG AS THEY HELD THE MAJORITY PREFERENCE?

9 A. NO, SIR.

10 Q. LET ME SHOW YOU EXHIBIT 71. IS THIS THE MEMORANDUM
11 OF UNDERSTANDING THAT YOU WERE REFERENCING IN YOUR OCTOBER

12 3, 2000 LETTER TO THE MAYOR?

13 A. YES.

14 Q. WHAT DOES PARAGRAPH TWO OF THE AGREEMENT SAY?

15 A. IT SAYS THAT WE WILL BE THE EXCLUSIVE COLLECTIVE
16 BARGAINING REPRESENTATIVE FOR ALL EMPLOYEES.

17 Q. SO IT INCLUDES AN AGREEMENT ABOUT RECOGNIZING THE
18 TEAMSTERS AS THE BARGAINING REPRESENTATIVE?

19 A. IF WE COULD PROVE WITH EVIDENCE, WITH
20 REPRESENTATION CARDS --

21 Q. THAT YOU HAVE MAJORITY SUPPORT?

22 A. YES.

23 Q. AS LONG AS YOU COULD SHOW MAJORITY SUPPORT -- THE
24 MEMORANDUM OF UNDERSTANDING THAT YOU REFERENCE IN YOUR
25 OCTOBER 3, 2000 LETTER REQUIRED NORCAL TO RECOGNIZE THE
26 TEAMSTERS?

27 A. THAT'S CORRECT. IF I COULD PROVE THAT I HAD THE
28 MAJORITY OF THE MEMBERS.

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1 Q. RIGHT.

2 A. YES.

3 Q. SO IN YOUR OCTOBER 3 LETTER TO THE MAYOR, WHEN YOU

4 TALK ABOUT VIOLATING THE MEMORANDUM OF UNDERSTANDING, YOU'RE
5 TALKING ABOUT TWO THINGS, WORKER RETENTION AND RECOGNIZING
6 THE TEAMSTERS IF THEY HAVE MAJORITY SUPPORT.

7 A. AND ALSO, MOST IMPORTANT, THAT THEY ALSO, THE MOU
8 REPRESENTED THAT THEY WOULD ALSO RECOGNIZE OUR ABILITY TO
9 PROVE THAT WE REPRESENT THE SERVICE AND RECYCLE INSTALLERS
10 AND EQUIPMENT THAT EVENTUALLY CWS TOOK OVER. IT WAS, I
11 THINK, RECYCLING OF, THE PROCESSING OF THE MATERIALS.

12 Q. WHEN YOU WENT TO NORCAL ABOUT YOUR CONCERNS WITH
13 CWS, THEY TOLD YOU THEY WEREN'T GOING TO INTERFERE WITH
14 ANOTHER COMPANY'S UNION ISSUES?

15 A. THAT'S CORRECT.

16 MR. FINKELSTEIN: LET ME SEE IF THE JURORS HAVE
17 ANY QUESTIONS. MR. MORALES, THANK YOU SO MUCH. I KNOW YOU
18 WERE HERE THIS MORNING; I APOLOGIZE FOR THAT
19 MISCOMMUNICATION.

20 THE FOREPERSON WILL REMIND YOU OF THE
21 ADMONITION.

22 THE FOREPERSON: I READ THE FULL TEXT OF THE
23 ADMONITION ON CONFIDENTIALITY. BASICALLY, NOTHING THAT YOU
24 HEARD, SAID, OR SAW HERE TODAY IS TO BE COMMUNICATED TO
25 ANYBODY BUT YOUR ATTORNEY, SUBJECT TO THE SAME CONDITIONS OF
26 CONFIDENTIALITY.

27 THE WITNESS: YES, SIR. THANK YOU.

28 MR. FINKELSTEIN: THANK YOU VERY MUCH,

1 MR. MORALES.

2 THE WITNESS: THANK YOU.

3 MR. FINKELSTEIN: THAT'S ALL THE WITNESSES WE HAVE
4 TODAY. WE'LL HAVE A SHORT WITNES TOMORROW AT 10:30, WE'LL
5 HAVE JERRY SILVA, THE CITY AUDITOR, TO DISCUSS THE AUDIT
6 REPORT THAT HE PREPARED IN CONNECTION WITH THE NORCAL
7 PROPOSAL PRIOR TO THE SECOND VOTE IN DECEMBER 2000, AND ALSO
8 TO DISCUSS WHAT INFORMATION HE HAD AND WHAT INFORMATION HE
9 DIDN'T HAVE AVAILABLE WHEN HE MADE A REPORT AND HOW IT MIGHT
10 HAVE IMPACTED ON HIS REPORT. AND THAT SHOULD CONCLUDE IT AS
11 FAR AS THE EVIDENCE.

12 THE FOREPERSON: JUST TO LET YOU KNOW, THE GRAND
13 JURY HAD INVITED MR. SILVA TO SPEAK TO THE GRAND JURY
14 EARLIER THIS YEAR, AND ONE OF THE TOPICS WAS THIS BUSINESS
15 OF THE NORCAL AGREEMENT. I THINK THAT WAS AN INCIDENTAL
16 PART OF HIS OVERALL PRESENTATION ABOUT THE FUNCTION OF THE
17 CITY AUDITOR.

18 MR. FINKELSTEIN: WELL, IT'S VERY IMPORTANT. I
19 DON'T KNOW WHAT HE MAY HAVE SAID TO YOU ABOUT THAT. IT'S
20 VERY IMPORTANT, BECAUSE THIS IS A FORMAL INVESTIGATION THAT
21 YOU COMPLETELY SET ASIDE AND DISREGARD ANYTHING THAT HE MAY
22 HAVE SAID, EVEN INCIDENTALLY, ABOUT THAT REPORT, AND ONLY

23 LISTEN TO WHAT HE SAYS FROM THE WITNESS STAND, AND BASE ANY
24 DECISIONS ACCORDINGLY ON WHAT THE WITNESSES SAY UNDER OATH,
25 NOT WHAT THEY MAY HAVE SAID TO YOU IN SOME OTHER CONTEXT.

26 IF ANYONE FEELS THAT HE OR SHE CANNOT DO THAT, YOU
27 NEED TO DECLARE THAT NOW.

28 THE FOREPERSON: ANYBODY HAVE A PROBLEM WITH BEING

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1 OBJECTIVE? OKAY.

2 MR. FINKELSTEIN: OKAY. WE'LL DEFINITELY CONCLUDE
3 BEFORE NOON TOMORROW MORNING. AND AT THIS POINT IN TIME
4 WE'RE NOT INTENDING TO CALL ADDITIONAL WITNESSES, SO AT THAT
5 POINT WE'LL RECESS, AND WE'LL NEED ABOUT A WEEK BEFORE WE
6 CAN SPEAK TO YOU AGAIN ABOUT THIS CASE.

7 ONE OTHER POINT. WE HEARD THIS MORNING EVIDENCE
8 REGARDING A JUNE E-MAIL, JUNE 2005 E-MAIL THAT MAYOR
9 GONZALES SENT TO 300 COMMUNITY LEADERS AND POLITICAL
10 LEADERS, AND I JUST WANT TO INSTRUCT YOU AND REMIND YOU THAT
11 THAT E-MAIL IS AGAIN WHAT WE CALL HEARSAY. THAT WASN'T
12 PRESENTED BY MAYOR GONZALES FROM THE WITNESS STAND; THAT'S
13 AN OUT OF COURT STATEMENT, WHICH WE LAWYERS CALL HEARSAY.
14 THAT'S BEING OFFERED TO SHOW WHAT THE MAYOR SAID ABOUT

15 VARIOUS THINGS, NOT AS EVIDENCE OF WHAT THE MAYOR SAID WAS
16 TRUE. SO YOU CAN CONSIDER IT FOR THAT PURPOSE, BUT NOT FOR
17 THE TRUTH. OKAY? ANY QUESTIONS ABOUT THAT?

18 THE FOREPERSON: ONE OF THE JURORS HAS A PROBLEM
19 EARLY IN THE MORNING, SO WE AGREED TO START AT 10:30. WE
20 HAVE TENTATIVELY SCHEDULED --

21 MR. FINKELSTEIN: WHY DON'T WE GO OFF THE RECORD
22 ABOUT SCHEDULING.

23 THE FOREPERSON: LET US ADJOURN THIS SESSION.
24 (COURT WAS ADJOURNED FOR THE DAY.)

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REPORTER'S CERTIFICATE

I, SUE HERFURTH, DO HEREBY CERTIFY THAT THE
FOREGOING IS A FULL, TRUE AND CORRECT TRANSCRIPT OF THE
PROCEEDINGS HAD IN THE WITHIN-ENTITLED ACTION HELD ON THE

7 10TH, 11TH, 12TH AND 16TH DAYS OF JUNE, 2006.

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THAT I REPORTED THE SAME IN STENO TYPE, BEING THE QUALIFIED AND ACTING OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, APPOINTED TO SAID COURT, AND THEREAFTER THE SAME WAS TRANSCRIBED BY COMPUTER UNDER MY DIRECTION AS HEREIN APPEARS.

I HAVE ADHERED TO CIVIL CODE OF PROCEDURE SECTION 237(1)(2), SIXTH DISTRICT COURT OF APPEAL MISCELLANEOUS ORDER 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 29TH DAY OF JUNE, 2006.

SUE HERFURTH, C. S. R.
CERTIFICATE NO. 9645

SUE HERFURTH, CSR #9645