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

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SAN JOSE, CALIFORNIA

VOLUME 7
PAGES 1013-1218

APRIL 4, 2006
APRIL 5, 2006
APRIL 6, 2006

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APPEARANCES:

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

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2		I N D E X	
3			
4		W I T N E S S	P A G E
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6		PAT DANDO	1015
7		CI NDY CHAVEZ	1176
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19 WELL DONE EXCEPT FOR THE BARBS YOU OCCASIONALLY THREW AT
20 OPPOSING COUNSEL, WHICH OF COURSE THE COURT DOESN'T
21 APPRECIATE, BUT I DO APPRECIATE THE GOOD BRIEFING.
22 THANK YOU VERY MUCH.
23 MR. FINKELSTEIN: THANK YOU VERY MUCH, YOUR HONOR.
24
25
26
27
28

SUE HERFURTH, CSR #9645

1176

1 SAN JOSE, CALIFORNIA APRIL 6, 2006
2
3 AFTERNOON SESSION:
4 (THE FOLLOWING PROCEEDINGS TOOK PLACE IN THE
5 PRESENCE OF THE GRAND JURY.)
6 CINDY CHAVEZ,
7 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
8 AS FOLLOWS:
9 THE WITNESS: I DO.
10 EXAMINATION:
11 BY MR. FINKELSTEIN:
12 Q. GOOD AFTERNOON. COULD YOU PLEASE TELL US YOUR FULL
13 NAME?
14 A. CYNTHIA MARIE CHAVEZ.
15 Q. COULD YOU SPELL YOUR NAME FOR THE REPORTER?
16 A. C-Y-N-T-H-I-A, M-A-R-I-E, C-H-A-V-E-Z.

17 Q. THANK YOU. BEFORE STARTING THE QUESTIONING, I HAVE
18 TO ADVISE YOU OF CERTAIN MATTERS, SO PLEASE LISTEN
19 CAREFULLY.

20 THE GRAND JURY IS INVESTIGATING THE FOLLOWING
21 SUBJECTS:

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

26 WHAT SAN JOSE CITY OFFICIALS KNEW ABOUT INCREASES
27 IN COSTS THAT MIGHT ARISE FROM THE EMPLOYMENT OF TEAMSTERS
28 TO DO RECYCLING WORK FOR NORCAL' S SUBCONTRACTOR, CWS.

SUE HERFURTH, CSR #9645

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1 WHEN SAN JOSE CITY OFFICIALS FIRST LEARNED ABOUT
2 SUCH INCREASED COSTS.

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

8 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
9 APPROVED A RATE HIKE IN THE RECYCLE PLUS SERVICE RATES IN
10 MAY OF 2003 TO PAY FOR THESE ADDITIONAL COSTS.

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

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

15 2004 TO PAY FOR ADDITIONAL COSTS DUE TO THE USE OF TEAMSTERS
16 BY CWS.

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

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

24 I' M NOT IMPLYING OR SUGGESTING ANYTHING SINISTER
25 OR IMPROPER. I' M POINTING OUT THAT AS A SAN JOSE CITY
26 OFFICIAL, GIVEN THE NATURE OF THE INVESTIGATION, YOU' RE A
27 SUBJECT OF THE INVESTIGATION.

28 YOU HAVE THE RIGHT TO REFUSE ANY QUESTION IF A

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1 TRUTHFUL ANSWER TO THE QUESTION WOULD TEND TO INCRIMINATE
2 YOU.

3 ANYTHING YOU DO OR SAY MAY BE USED AGAINST YOU BY
4 THE GRAND JURY OR IN A SUBSEQUENT LEGAL PROCEEDING.

5 IF YOU HAVE RETAINED COUNSEL, THE GRAND JURY WILL
6 PERMIT YOU REASONABLE OPPORTUNITY TO STEP OUTSIDE THE GRAND
7 JURY ROOM AT ANY TIME TO CONSULT WITH COUNSEL IF YOU SO
8 DESIRE.

9 DO YOU UNDERSTAND EVERYTHING I HAVE JUST TOLD YOU?

10 A. I DO. I CAN'T REPEAT IT BACK TO YOU, I MEAN, THE
11 LONGER LIST, BUT I ABSOLUTELY UNDERSTAND IT.

12 Q. DO YOU HAVE ANY QUESTIONS?

- 13 A. NO, I DO NOT.
- 14 Q. WHY DON' T WE BEGIN, THEN.
- 15 WHEN WERE YOU FIRST ELECTED TO THE SAN JOSE CITY
- 16 COUNCIL?
- 17 A. IN 1998, BUT MY TERM BEGAN IN DECEMBER OF 1999.
- 18 Q. WHEN DOES YOUR CURRENT TERM EXPIRE?
- 19 A. IN ABOUT SEVEN MONTHS. IN DECEMBER OF THIS YEAR.
- 20 Q. IF YOU COULD TRY ADJUSTING THE MICROPHONE A LITTLE
- 21 BIT CLOSER TO YOU; I' M HAVING TROUBLE HEARING YOU.
- 22 IN THE YEAR 2000, DID THE CITY OF SAN JOSE ISSUE
- 23 AN RFP FOR RECYCLE PLUS SERVICES?
- 24 A. 2000 OR 1999, YES.
- 25 Q. NOW, WERE YOU, DID YOU PARTICIPATE IN THE
- 26 DEVELOPMENT OF THAT RFP?
- 27 A. I DID.
- 28 Q. AND THAT WAS A FAIRLY LENGTHY PROCESS THAT THE CITY

SUE HERFURTH, CSR #9645

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- 1 WENT THROUGH TO DEVELOP THAT RFP?
- 2 A. YES.
- 3 Q. COULD YOU DESCRIBE IT BRIEFLY FOR US?
- 4 A. UH -- A LOT OF VERY LONG MEETINGS ABOUT EVERYTHING,
- 5 FROM THINGS THAT I WAS CONCERNED ABOUT, LIKE LABOR PEACE AND
- 6 WORKER RETENTION, TO WHETHER OR NOT YOU PUT BINS ON THE
- 7 STREET OR LEAVE GRASS ON THE STREET, AND THOSE WERE VERY
- 8 LONG CONVERSATIONS.
- 9 Q. DID IT TAKE MORE THAN A YEAR OF MEETINGS AND
- 10 DISCUSSIONS TO DEVELOP THE FINAL RFP?

11 A. YOU KNOW, I DON'T RECALL THE EXACT AMOUNT OF TIME,
12 BUT IT WAS A LOT OF HOURS.

13 Q. WERE YOU SATISFIED AT THE END OF THAT PROCESS THAT
14 THE RFP THAT WAS RELEASED INCLUDED EVERYTHING THAT IT SHOULD
15 HAVE INCLUDED TO ENSURE AND MEET ALL OF THE CITY'S GOALS
16 WITH RESPECT TO THE SERVICES AT THE TIME?

17 A. UH, IN GENERAL I WOULD SAY YES, WITH ONE EXCEPTION
18 THAT I WAS CONCERNED ABOUT, AND THAT WAS THE MRF WORKERS,
19 THE PEOPLE WHO ACTUALLY COLLECTED THE RECYCLING, BECAUSE IT
20 WAS UNCLEAR TO ME HOW THEIR WAGES WOULD BE CALCULATED,
21 WHETHER OR NOT THEY WERE GETTING PREVAILING WAGE OR LIVING
22 WAGE. I WAS FAIRLY NEW ON THE COUNCIL, SO THE WHOLE RFP
23 PROCESS WAS NEW TO ME IN TERMS OF DEVELOPING, SO I WAS
24 PROBABLY A LITTLE UNSURE ABOUT IT.

25 Q. DID YOU VOTE IN FAVOR OF THE FINAL RFP?

26 A. I DID.

27 Q. WITH REGARD TO THE MRF WORKERS, DID YOU HAVE AN
28 UNDERSTANDING ONE WAY OR THE OTHER WHETHER OR NOT THEY CAME

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1180

1 WITHIN THE THEN EXISTING PREVAILING WAGE ORDINANCE?

2 A. THE ANSWER TO THAT IS YES, THAT THEY DID NOT,
3 ACCORDING TO THE CITY ATTORNEY AND TO NINA GRAYSON.

4 Q. CAN YOU SPELL THAT PERSON'S NAME?

5 A. G-R-A-Y-S-O-N.

6 Q. OH, GRAYSON DID YOU SAY?

7 A. YES.

8 Q. ISN'T IT NINA GRAYSON?

- 9 A. YES, I SAID NINA -- I'LL TRY TO SPEAK MORE CLEARLY.
- 10 Q. IT WAS CLEAR NOW THAT THE MRF WORKERS WERE NOT
- 11 COVERED BY THE CITY'S THEN EXISTING PREVAILING WAGE
- 12 ORDINANCE?
- 13 A. CORRECT.
- 14 Q. YOU SAID ACCORDING TO THE CITY ATTORNEY AND NINA
- 15 GRAYSON, RIGHT?
- 16 A. CORRECT.
- 17 Q. DID SHE BRIEF THE COUNCIL ON THAT ISSUE AT SOME
- 18 POINT?
- 19 A. SHE DID.
- 20 Q. SO THAT WOULD HAVE INCLUDED MAYOR GONZALES, I TAKE
- 21 IT?
- 22 A. THE ENTIRE COUNCIL. I DON'T KNOW IF ANYONE MISSED
- 23 THE MEETING, BUT THE PRESENTATION WAS TO THE FULL CITY
- 24 COUNCIL.
- 25 Q. WHEN DID THE MEETING TAKE PLACE?
- 26 A. I DON'T RECALL THE DATE.
- 27 Q. WAS IT BEFORE OR AFTER THE RFP WAS RELEASED?
- 28 A. IT WAS PROBABLY -- I DON'T RECALL. IT MIGHT HAVE

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1181

- 1 ACTUALLY BEEN AFTER THE RFP WAS RELEASED, BECAUSE THE
- 2 COUNCIL, AND AS A NEW COUNCILMEMBER I REMEMBER IT BEING A
- 3 FEAR OF MINE IS THE WHOLE TRANSITION PROCESS OF PUTTING NEW
- 4 CONTRACTORS IN PLACE. SO I KNOW WE HAD A SERIES OF MEETINGS
- 5 ON THE TRANSITION, SO I DON'T KNOW IF IT WAS JUST AS PART OF
- 6 THE TRANSITION OR PRIOR TO THE RFP BEING RELEASED.

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

10 A. NO.

11 Q. WAS THERE ANY REQUIREMENT IN THE RFP THAT COMPANIES
12 SUBMITTING PROPOSALS RECOGNIZED THE SAME UNIONS THAT HAD
13 BEEN RECOGNIZED BY THE EXISTING CONTRACTORS?

14 A. NO.

15 Q. WAS THERE ANY REQUIREMENT IN THE RFP THAT COMPANIES
16 SUBMITTING PROPOSALS AGREE TO BE BOUND BY EXISTING
17 COLLECTIVE BARGAINING AGREEMENTS IN PLACE WITH EXISTING
18 CONTRACTORS?

19 A. NO.

20 Q. WAS THERE ANY REQUIREMENT IN THE RFP THAT COMPANIES
21 SUBMITTING PROPOSALS USE TEAMSTERS?

22 A. NO.

23 Q. DO YOU KNOW WHETHER OR NOT THE CITY COULD HAVE
24 REQUIRED COMPANIES SUBMITTING PROPOSALS TO USE TEAMSTERS?

25 A. WE COULD NOT.

26 Q. WHY DO YOU SAY THAT?

27 A. IT'S NOT WITHIN THE PURVIEW OF ANY GOVERNMENTAL
28 ENTITY TO TELL WORKERS WHAT UNION TO HAVE.

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1182

1 Q. OKAY. YOU UNDERSTOOD THAT?

2 A. I WORKED FOR THE LABOR MOVEMENT PRIOR, SO I
3 UNDERSTOOD THAT PAINFULLY WELL.

4 Q. DID YOU BELIEVE THAT ANY ATTEMPT TO DO SO MIGHT BE
Page 180

5 A VIOLATION OF FEDERAL LABOR LAW?

6 WHILE I PROBABLY KNEW THAT, MY BIGGER CONCERN WAS
7 THAT PRIOR TO COMING TO EVEN THE SOUTH BAY LABOR COUNCIL, I
8 WORKED FOR AN ORGANIZATION CALLED ORGANIZING INSTITUTE.
9 THAT IS A PART OF THE NATIONAL AFL/CIO. THEY TRAINED UNIONS
10 ON ORGANIZING. THERE WERE MANY TIMES UNIONS HAD DISPUTES.
11 THE AFL/CIO HAS PROCESSES FOR THOSE DISPUTES TO BE DEALT
12 WITH OUTSIDE OF THE NLRB. IT COULD GO WITH THE LABOR
13 MOVEMENT OR WITH THE NATIONAL LABOR RELATIONS BOARD. IT
14 DEPENDS ON THE UNIONS AS TO WHAT THE PROCESS WOULD BE.

15 Q. WHAT DID YOU DO BEFORE BEING ELECTED TO CITY
16 COUNCIL?

17 A. I WAS THE DIRECTOR OF EDUCATION OUTREACH FOR SOUTH
18 BAY AFL/CIO LABOR COUNCIL. AND BEFORE THAT I WORKED FOR THE
19 ORGANIZING INSTITUTE.

20 Q. DO YOU KNOW SOMEONE NAMED AMY DEAN?

21 A. VERY WELL.

22 Q. AND WHO IS AMY DEAN?

23 A. SHE WAS THE HEAD OF THE LABOR COUNCIL WHEN I WAS
24 THE DIRECTOR OF EDUCATION OUTREACH.

25 Q. WHAT IS THE SOUTH BAY LABOR COUNCIL?

26 A. IT'S AN UMBRELLA ORGANIZATION FOR ALL LOCAL UNIONS
27 THAT ARE PART OF THE INTERNATIONAL AFL/CIO AS IT WAS THEN.

28 Q. AND SO THAT WOULD INCLUDE THE TEAMSTERS?

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1183

1 A. YES. I'M SURE THE TEAMSTERS WERE MEMBERS.

2 Q. AND BACK IN 2000, THAT WOULD HAVE INCLUDED ILWU
Page 181

3 WORKERS?

4 A. I DON' T KNOW FOR CERTAIN, BUT MY ASSUMPTION WOULD
5 BE YES.

6 Q. GENERALLY SPEAKING, THE NUMBERS OF TEAMSTERS WITHIN
7 THE SOUTH BAY LABOR COUNCIL VERSUS THE NUMBER OF
8 LONGSHOREMEN, HOW WOULD YOU COMPARE THOSE NUMBERS?

9 A. I DON' T KNOW THAT OFF THE TOP OF MY HEAD. I
10 IMAGINE THE ILWU WOULD BE SMALLER BECAUSE MOST OF THEIR
11 BASIC WORKERS ARE PORT WORKERS.

12 Q. THEY ALSO INCLUDE WAREHOUSEMEN?

13 A. THEY DO?

14 Q. CORRECT. DID NORCAL SUBMIT A PROPOSAL IN RESPONSE
15 TO THE RFP?

16 A. THEY DID.

17 Q. DID THE NORCAL PROPOSAL INCLUDE USING A
18 SUBCONTRACTOR, CALIFORNIA WASTE SOLUTIONS, OR CWS, TO SORT
19 THE RECYCLABLES?

20 A. THEY DID.

21 Q. DO YOU RECALL WHETHER OR NOT THE NORCAL PROPOSAL
22 INDICATED THAT CWS WAS GOING TO USE ILWU WORKERS PURSUANT TO
23 AN EXISTING COLLECTIVE BARGAINING AGREEMENT?

24 A. YES, I DO.

25 Q. WHAT' S THE ANSWER? I ASKED YOU IF YOU RECALL THAT.

26 A. I DO.

27 Q. WHAT' S THE ANSWER? DID THEY INDICATE THEY WERE
28 GOING TO USE ILWU WORKERS PURSUANT TO THEIR EXISTING

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1 COLLECTIVE BARGAINING AGREEMENT?

2 A. YES.

3 Q. NOW, DO YOU RECALL THAT IN THE FALL OF 2000, ON
4 SEPTEMBER 22, 2000 TO BE PRECISE, CARL MOSHER, THE HEAD OF
5 ESD, OR THE ENVIRONMENTAL SERVICES DEPARTMENT, PREPARED A
6 MEMO TO THE MAYOR AND CITY COUNCIL REGARDING THE SELECTION
7 OF RECYCLE PLUS SERVICE CONTRACTORS?

8 A. NO.

9 Q. YOU DON'T RECALL THAT?

10 A. I MEAN, I DON'T RECALL THAT PARTICULAR ACTION ON
11 THAT PARTICULAR DAY.

12 Q. OKAY. LET ME SHOW YOU GRAND JURY EXHIBIT 5. TAKE
13 A LOOK AT THAT.

14 A. THANK YOU.

15 Q. SURE. HAVE YOU SEEN THAT DOCUMENT BEFORE?

16 A. YEAH.

17 Q. WHAT IS IT?

18 A. IT'S THE RECOMMENDATION FROM OUR STAFF AS TO WHO
19 SHOULD BE CHOSEN FOR WHAT DISTRICTS FOR THE RECYCLE PLUS
20 CONTRACT.

21 Q. RIGHT, AND IT'S DATED SEPTEMBER 22, 2000?

22 A. YES.

23 Q. YOU NEED TO SORT OF PAUSE A MOMENT BEFORE
24 ANSWERING. THE REPORTER CAN ONLY TAKE ONE OF US AT A TIME.
25 AND THE MEMO IS FROM CARL MOSHER, IS THAT RIGHT?

26 A. CORRECT.

27 Q. AT THE TIME HE WAS HEAD OF ESD?

28 A. CORRECT.

1 Q. WAS THERE ANYTHING IN THE MEMO -- THE MEMO
2 RECOMMENDS NORCAL AS ONE OF THE VENDORS THAT SHOULD RECEIVE
3 A CONTRACT FROM THE CITY?

4 A. CORRECT.

5 Q. WAS THERE ANYTHING IN THE ESD RECOMMENDATION ABOUT
6 CWS SWITCHING FROM ILWU WORKERS TO TEAMSTERS?

7 A. I DON'T RECALL.

8 Q. DO YOU WANT TO TAKE A MOMENT AND JUST LOOK AT IT
9 AND SEE IF YOU CAN LOCATE ANYTHING ON THAT ISSUE.

10 A. COULD YOU ASK ME THE QUESTION AGAIN?

11 Q. SURE. IS THERE ANYTHING IN THE ESD RECOMMENDATION
12 CONTAINED IN CARL MOSHER'S SEPTEMBER 22 MEMO ABOUT CWS
13 SWITCHING FROM ILWU WORKERS TO TEAMSTERS?

14 A. NOT THAT I'VE LOCATED.

15 Q. OKAY. IS THERE ANYTHING THAT IDENTIFIES ANY
16 PROBLEM WITH CWS USING ILWU WORKERS AS OPPOSED TO SOME OTHER
17 UNION?

18 A. NO, NOT THAT I'VE LOCATED.

19 Q. AS A MATTER OF FACT, DOESN'T THE MEMO INDICATE IN
20 ITS SUMMARY OF PROPOSALS THAT CWS IS GOING TO BE USING ILWU
21 WORKERS PURSUANT TO AN EXISTING COLLECTIVE BARGAINING
22 AGREEMENT?

23 A. I DIDN'T LOCATE THAT.

24 Q. I THINK IT'S IN ATTACHMENT D. THERE ARE A BUNCH OF
25 ATTACHMENT DS WHICH GO THROUGH PROPOSALS AND VENDOR --

26 A. I SEE. YOU SHOULD HAVE TOLD ME THAT EARLIER. YES,
27 IT DOES ACKNOWLEDGE THAT THERE WILL BE NO UNION TRANSITION
28 REQUIRED.

1 Q. DOES IT SAY ANYTHING ABOUT CWS HAVING EXISTING
2 COLLECTIVE BARGAINING AGREEMENTS WITH ILWU?

3 A. YES.

4 Q. WHAT DOES IT SAY?

5 A. CWS MAINTAINS AN AGREEMENT WITH ILWU LOCAL 6 FOR
6 ITS OAKLAND OPERATION.

7 Q. DOES IT INDICATE THAT AGREEMENT WILL BE APPLIED TO
8 THE SAN JOSE OPERATION?

9 A. IT DOESN'T SAY THAT SPECIFICALLY, BUT IT DOES SAY
10 THERE WILL BE NO -- SAYS IT WILL BE AUGMENTED TO INCLUDE
11 SAN JOSE BURKE STREET FACILITY. SO, YES, IT DOES.

12 Q. IT WAS CLEAR ANYONE READING THE SEPTEMBER 22, 2000
13 STAFF RECOMMENDATION WHO GOT TO THAT PAGE OF THE DOCUMENT
14 WOULD UNDERSTAND THAT THERE WAS AN EXISTING COLLECTIVE
15 BARGAINING AGREEMENT IN PLACE BETWEEN CWS AND ILWU WHICH
16 WOULD BE EXTENDED TO COVER THE SAN JOSE OPERATION. THAT IS
17 PROPOSED IN THE PROPOSAL, CORRECT?

18 A. THAT'S CORRECT.

19 Q. IS THERE ANYTHING IN THE STAFF RECOMMENDATION OF
20 SEPTEMBER 22, 2000 ABOUT HAVING THE CITY AUDITOR REVIEW
21 NORCAL'S PROPOSAL?

22 A. I DID NOT SEE IT IN THIS DOCUMENT, BUT --

23 Q. THAT'S THE DOCUMENT WE'RE CONCERNED ABOUT.

24 A. I DIDN'T SEE IT IN THIS DOCUMENT.

25 Q. I UNDERSTAND THERE ARE OTHER DOCUMENTS IN THE CASE.
26 LET'S STAY WITH THIS FOR A MOMENT.

27 IN THE STAFF RECOMMENDATION, APPARENTLY STAFF DID

28 NOT THINK THERE WAS A NEED FOR ANY REVIEW BY THE AUDITOR; IS

SUE HERFURTH, CSR #9645

1187

1 THAT CORRECT?

2 A. I DON' T KNOW THE ANSWER TO THAT.

3 Q. WELL, DID THEY MAKE ANY SUCH RECOMMENDATION?

4 A. I DID.

5 Q. SORRY?

6 A. IT WAS MY RECOMMENDATION.

7 Q. I UNDERSTAND, BUT I' M ASKING ABOUT THE STAFF
8 RECOMMENDATION.

9 A. THERE IS NOTHING IN THIS DOCUMENT TO REFLECT ANY
10 NEED FOR THE AUDITOR.

11 Q. THANK YOU. NOW, DID MAYOR GONZALES RECOMMEND THE
12 SELECTION OF NORCAL AS ONE OF THE RECYCLE PLUS SERVICE
13 PROVIDERS IN THAT MEMO TO THE CITY COUNCIL PRIOR TO THE
14 FIRST VOTE?

15 A. I DON' T RECALL.

16 Q. OKAY. LET ME HAVE YOU LOOK AT EXHIBIT 14, IF YOU
17 WOULD.

18 A. THANK YOU.

19 Q. SURE. HAVE YOU SEEN EXHIBIT 14 BEFORE?

20 A. I HAVE.

21 Q. WHAT IS EXHIBIT 14?

22 A. A MEMORANDUM FROM MAYOR GONZALES, VICE MAYOR FRANK
23 FISCALINI, AND MYSELF, COUNCILMEMBER CHAVEZ, DANDO, AND
24 POWERS.

25 Q. IT' S DATED OCTOBER 8, 2000?

26 A. CORRECT.
27 Q. DO YOU RECOGNIZE ANY OF THE INITIALS ON THE MEMO?
28 A. YES.

SUE HERFURTH, CSR #9645

1188

1 Q. WHICH ONE DO YOU RECOGNIZE?
2 A. WELL, THE ONLY WAY -- I MEAN, IN TERMS OF HOW
3 PEOPLE SIGN MEMOS?
4 Q. WHICH ARE YOUR INITIALS?
5 A. C. C.
6 Q. DO YOU KNOW AT WHOSE REQUEST THIS MEMO WAS
7 PREPARED?
8 A. I DO NOT.
9 Q. DO YOU KNOW WHO PREPARED THE MEMO?
10 A. MY RECOLLECTION IS THIS WAS PREPARED BY THE MAYOR'S
11 OFFICE.
12 Q. DO YOU KNOW WHO IN THE MAYOR'S OFFICE MIGHT HAVE
13 PREPARED THIS?
14 A. MY RECOLLECTION IS THAT IT WOULD HAVE BEEN, I
15 TALKED TO JOE GUERRA ABOUT IT. I DON'T KNOW IF HE ACTUALLY
16 WROTE IT, BUT THAT'S WHO I SPOKE TO.
17 Q. DO YOU KNOW WHY THIS MEMO WAS PREPARED, WHAT THE
18 PURPOSE OF IT WAS?
19 A. OFTEN WHEN THERE'S A BIG DECISION TO BE MADE AND
20 PEOPLE HAVE A LOT OF OPINIONS ABOUT IT, THE MAYOR OR SOME
21 OTHER COUNCILMEMBER WILL PULL TOGETHER A FEW PEOPLE TO TRY
22 TO RESPOND TO THE ISSUE AT HAND, AND I IMAGINE THAT'S
23 BECAUSE WE HAD SO MANY QUESTIONS.

24 I DON' T REMEMBER WHAT MEETING WE HAD RIGHT BEFORE
25 THIS, BUT AT A LOT OF THE MEETINGS I PARTICIPATED IN, THERE
26 WERE A LOT OF DIFFERENT CONCERNS AND ISSUES RAISED.

27 Q. DO YOU REMEMBER WHEN IT WAS YOU FIRST SAW THIS
28 MEMO?

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1189

1 A. I DO NOT.

2 Q. DID YOU SEE IT IN DRAFT FORM BEFORE THIS CURRENT
3 FORM?

4 A. I DON' T RECALL, BUT -- I DON' T RECALL.

5 Q. OKAY. DID YOU INITIAL IT ON OCTOBER 8?

6 A. I DON' T RECALL.

7 Q. OKAY. DID YOU, I TAKE IT YOU INITIALED IT BEFORE
8 THE TUESDAY OCTOBER 10, 2000 FIRST VOTE ON THE NORCAL
9 PROPOSAL, CORRECT?

10 A. THAT WOULD BE MY ASSUMPTION.

11 Q. WELL, THIS MEMO WAS SUBMITTED TO THE CITY COUNCIL,
12 WAS IT NOT?

13 A. YES.

14 Q. SO YOU WOULD HAVE HAD TO HAVE SIGNED IT BEFORE ITS
15 SUBMISSION TO THE CITY OR INITIALED IT BEFORE SUBMISSION TO
16 THE COUNCIL?

17 A. CORRECT.

18 Q. YOU KNOW YOU SIGNED IT AT LEAST BEFORE THE OCTOBER
19 10 COUNCIL MEETING, RIGHT?

20 A. CORRECT.

21 Q. HOW DID YOU FIRST SEE THIS MEMO, DID SOMEONE SHOW

22 IT TO YOU?

23 A. I DON'T RECALL IF SOMEONE BROUGHT IT IN MY OFFICE,
24 IF THEY GAVE IT TO A STAFF PERSON. I DON'T REMEMBER.

25 Q. DID YOU READ THE MEMO BEFORE YOU INITIALED IT?

26 A. YES.

27 Q. WAS THERE ANYTHING IN THE MEMO THAT YOU DISAGREED
28 WITH?

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1190

1 A. NO, THERE WERE -- NO.

2 Q. OKAY. IS THERE ANYTHING IN THIS OCTOBER 8, 2000
3 MEMO ABOUT ANY PROMISES OR REPRESENTATIONS THAT MAY HAVE
4 BEEN MADE TO NORCAL?

5 A. NO.

6 Q. IS THERE ANYTHING IN THIS MEMO ABOUT ANY PROBLEMS
7 WITH CWS NOT USING TEAMSTERS?

8 A. NO.

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

11 A. NO.

12 Q. IS THERE ANYTHING IN THIS MEMO ABOUT COMPENSATING
13 NORCAL FOR CWS SWITCHING TO THE TEAMSTERS?

14 A. NO.

15 Q. DID YOU TALK WITH MAYOR GONZALES ABOUT THIS
16 SELECTION OF RECYCLE PLUS CONTRACTORS BEFORE SIGNING THIS
17 MEMO?

18 A. NO. WELL, NOT THAT I RECALL. I TALKED TO JOE.

19 Q. JOE GUERRA?

- 20 A. CORRECT.
- 21 Q. AND WHEN DID THAT CONVERSATION TAKE PLACE?
- 22 A. BEFORE I WOULD HAVE SIGNED THIS MEMO, AND THE
- 23 REASON I KNOW THAT IS I WAS CONCERNED ABOUT THE DIFFERENTIAL
- 24 BETWEEN THE NORCAL CONTRACT AND OTHER CONTRACTS, WHICH IS
- 25 WHY I REQUESTED THAT THE CITY AUDITOR EVALUATE IT.
- 26 Q. THE COUNCIL MEETING WAS ON TUESDAY OCTOBER 10,
- 27 2000. THAT WOULD MEAN THAT THE DATE ON THE MEMO WOULD HAVE
- 28 BEEN A SUNDAY, CORRECT?

SUE HERFURTH, CSR #9645

1191

- 1 A. CORRECT.
- 2 Q. OKAY. SO IS IT YOUR TESTIMONY THAT IT WAS YOUR
- 3 IDEA TO RECOMMEND THAT THE CITY AUDITOR REVIEW THE NORCAL
- 4 PROPOSAL BEFORE A FINAL SELECTION WAS MADE?
- 5 A. YES.
- 6 Q. OKAY. AND THAT RECOMMENDATION IS INCORPORATED INTO
- 7 THE MEMO, IS IT NOT?
- 8 A. YES.
- 9 Q. SO YOU MUST HAVE HAD A DISCUSSION WITH JOE GUERRA
- 10 WHEN, THEN?
- 11 A. I DON'T RECALL WHEN I SPOKE TO HIM.
- 12 Q. SO THE MEMO WAS PREPARED ON THE DATE INDICATED,
- 13 SUNDAY, OCTOBER 8, 2000. DO YOU RECALL HAVING A DISCUSSION
- 14 OVER THE WEEKEND WITH JOE GUERRA?
- 15 A. I DO NOT. I DON'T RECALL TALKING TO HIM OVER THE
- 16 WEEKEND, NO.
- 17 Q. WHAT ABOUT THAT FRIDAY, OCTOBER 6?

- 18 A. THAT' S A POSSI B I L I T Y.
- 19 Q. WHAT DO YOU REMEMBER ABOUT YOUR DI SCUSSI ON WITH
- 20 JOE GUERRA?
- 21 A. UH -- I REMEMBER THAT I WAS DRIVING AND IT WAS
- 22 RAINING, AND I PULLED OFF TO TALK TO HIM ON MY CELL PHONE.
- 23 AND I REMEMBER THAT BECAUSE I WAS HAVING LUNCH WITH A FRIEND
- 24 AND I JUST TOLD HER I WAS PREGNANT. SO IT STUCK IN MY MIND.
- 25 Q. SO THIS WAS A CELL PHONE CONVERSATION?
- 26 A. IT WAS.
- 27 Q. AND WAS IT SHORTLY BEFORE THE LUNCH HOUR, THEN?
- 28 A. IT WAS AFTER.

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- 1 Q. AFTER LUNCH?
- 2 A. CORRECT.
- 3 Q. DO YOU RECALL HOW MUCH AFTER?
- 4 A. I WASN' T FEELING WELL, SO THAT' S WHY I REMEMBER.
- 5 Q. AND WHAT DID YOU AND MR. GUERRA TALK ABOUT?
- 6 A. I SHARED MY CONCERNS ABOUT THE DI SCREPANCY BETWEEN
- 7 THE NORCAL BID AND THE NEXT BIDDERS, AND JUST THOUGHT THE
- 8 DELTA WAS RATHER LARGE. AND THERE WERE LOTS OF ISSUES
- 9 RELATED TO HAVING THE SPLIT CART AND GARBAGE AND RECYCLING
- 10 GOING IN AND WHETHER OR NOT THE NUMBERS WERE ACCURATE IN
- 11 TERMS OF WHAT STAFFING IT WOULD TAKE TO ACTUALLY DO THAT.
- 12 Q. SO ARE YOU SUGGESTING YOU WERE CONCERNED NORCAL MAY
- 13 BE TOO LOW TO BE TRUE?
- 14 A. CORRECT.
- 15 Q. WHAT DID MR. GUERRA SAY?

16 A. HE AGREED THAT AN AUDIT WAS PROBABLY A VERY GOOD
17 IDEA.

18 Q. SO DID YOU HAVE ANY DISCUSSION -- WHEN YOU HAD THIS
19 DISCUSSION WITH MR. GUERRA, WAS IT CONTEMPLATED PRIOR TO THE
20 VOTE ON OCTOBER 10 SOME MEMO WOULD BE PUT TOGETHER AND
21 CIRCULATED TO SOME MEMBERS OF COUNCIL?

22 A. I KNEW THAT THERE WOULD BE A MEMO COMING FORWARD.
23 I ASSUME HE TALKED TO ME, SAYING HE WOULD LIKE ME TO SIGN
24 IT.

25 Q. HOW DID YOU KNOW THE MEMO WOULD BE COMING FORWARD?

26 A. WE PROBABLY TALKED ABOUT IT. I'M NOT RECALLING THE
27 DETAILS, BUT WE PROBABLY SPOKE ABOUT IT.

28 Q. SO WHAT ELSE DO YOU REMEMBER ABOUT YOUR

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1 CONVERSATION WITH MR. GUERRA?

2 A. MOSTLY THAT I WAS PLEASED THAT HE WAS WILLING TO
3 INCORPORATE THE AUDIT BECAUSE IT WAS IMPORTANT TO ME.

4 Q. DID HE INDICATE THAT HE WOULD INCORPORATE IT IN
5 THIS MEMO?

6 A. YES, HE TOLD ME HE THOUGHT IT WAS A GOOD IDEA.

7 Q. IT IS INCORPORATED IN THE MEMO?

8 A. CORRECT.

9 Q. SO THE MEMO RECOMMENDS, AT LEAST PRELIMINARILY,
10 THAT NORCAL BE SELECTED AS ONE OF THE SERVICE PROVIDERS,
11 CORRECT?

12 A. CORRECT.

13 Q. AND IT ALSO RECOMMENDS THAT THE CITY AUDITOR REVIEW

14 THE PROPOSALS BEFORE FINAL SELECTION IS MADE, CORRECT?

15 A. CORRECT.

16 Q. I'M JUST PARAPHRASING, BUT THAT WAS THE IMPORT OF
17 THE RECOMMENDATION CORRECT?

18 A. THAT WAS MY INTENT.

19 Q. YES. OKAY. JUST GIVE ME A MOMENT, I'M TRYING TO
20 ASSEMBLE SOME DOCUMENTS HERE.

21 I'M GOING TO MARK AS EXHIBIT 94 WHAT APPEARS TO
22 HAVE BEEN FAXED ON OCTOBER 4, 2000.

23 THE FOREPERSON: I THINK WE'RE UP TO 96.

24 MR. FINKELSTEIN: SORRY THANK YOU. 96 THEN. THE
25 FIRST -- AND THESE EXHIBITS HAVE BATES NUMBERS CC058, 059,
26 060, AND 061.

27 THE FOREPERSON: SO MARKED.

28 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND

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1194

1 JURY EXHIBIT 96.)

2 BY MR. FINKELSTEIN:

3 Q. CAN YOU TAKE A LOOK AT THAT EXHIBIT AND TELL US IF
4 YOU HAVE EVER SEEN ANY PORTION OF THOSE DOCUMENTS BEFORE?

5 A. I DON'T RECALL WITH SPECIFICITY SEEING THIS
6 DOCUMENT.

7 Q. LET ME DIRECT YOUR ATTENTION TO THE BATES NUMBER AT
8 THE BOTTOM OF THE DOCUMENT. THAT BATES NUMBER INDICATES
9 THAT IT WAS PRODUCED TO US IN RESPONSE TO A SUBPOENA SERVED
10 ON THE CUSTODIAN OF RECORDS FOR THE OFFICE OF COUNCILMEMBER
11 CINDY CHAVEZ.

12 SO YOUR TESTIMONY IS YOU DON'T REMEMBER IF YOU'VE
13 SEEN THAT DOCUMENT BEFORE OR NOT?

14 A. I DON'T. THE SENTIMENTS SOUND FAMILIAR, BUT NOT
15 THE ACTUAL LETTER. I READ A LOT OF DOCUMENTS FOR THIS, FOR
16 THE HEARINGS.

17 Q. PRIOR TO THE FIRST VOTE ON OCTOBER 10, 2000, DID
18 YOU LEARN OF SOME POSSIBLE LABOR ISSUE INVOLVING CWS?

19 A. YES.

20 Q. AND HOW DID YOU LEARN ABOUT IT?

21 A. UH -- I SPOKE TO UH -- THE TEAMSTERS, TO BOBBY
22 MORALES. AND I DON'T REMEMBER IF ANYBODY FROM NORCAL TALKED
23 TO ME ABOUT IT, BUT I WAS AWARE OF IT, YES.

24 Q. CAN YOU GIVE US SOME APPROXIMATE IDEA OF WHEN IT
25 WAS YOU SPOKE TO BOB MORALES?

26 A. I DON'T RECALL.

27 Q. WOULD IT HAVE BEEN THE WEEK PRECEDING FRIDAY, THE
28 WEEK OF FRIDAY, OCTOBER 6?

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1 A. I DON'T RECALL.

2 Q. IT WAS BEFORE THE FIRST CITY COUNCIL VOTE ON
3 OCTOBER 10?

4 A. MY BEST RECOLLECTION IS THAT IT WOULD HAVE BEEN
5 BEFORE THEN.

6 Q. WHAT DID MR. MORALES TELL YOU?

7 A. THAT HE WAS CONCERNED ABOUT THE WORKERS BEING
8 REPRESENTED BY ILWU BECAUSE THEIR CONTRACT WAS SO MUCH LOWER
9 THAN THE TEAMSTERS, AND THAT IT WOULD IMPACT THE WAGE

10 EARNING STANDARDS.

11 Q. WHAT DID YOU TELL MR. MORALES?

12 A. I TOLD BOBBY, I'M SORRY THAT YOU FEEL THAT WAY, AND
13 IT'S NOT AN ISSUE FOR THE COUNCIL, IT IS AN ISSUE FOR THE
14 LABOR MOVEMENT.

15 Q. WHAT DID MR. MORALES SAY?

16 A. HE GOT VERY UPSET.

17 Q. WHY IS THAT?

18 A. I THINK HE EXPECTED, BECAUSE I CAME FROM THE LABOR
19 MOVEMENT, I WOULD BE MORE PROTECTIVE OF THE INTERESTS, YOU
20 KNOW, HIS INTERESTS. BUT I CAME FROM THE LABOR MOVEMENT AND
21 UNDERSTOOD THAT THE CITY COUNCIL WAS NOT THE PLACE FOR THAT
22 DISCUSSION.

23 Q. HAD MR. MORALES OR THE TEAMSTERS SUPPORTED YOU IN
24 ANY OF YOUR PRIOR CAMPAIGNS FOR ELECTED OFFICE?

25 A. I'M NOT CERTAIN, BUT THEY -- I WOULD HAVE EXPECTED
26 THEM TO, YES.

27 Q. DID MR. MORALES REMIND YOU OF THAT IN HIS
28 CONVERSATION WITH YOU?

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1 A. HE DID NOT.

2 Q. WAS ANYTHING ELSE SAID THAT YOU RECALL BETWEEN YOU
3 AND MR. MORALES?

4 A. HE WAS VERY ANGRY, AND SO I DON'T RECALL ANY
5 DETAILS EXCEPT HE WAS VERY ANGRY.

6 Q. WHERE DID THIS CONVERSATION TAKE PLACE?

7 A. THE ONE I REMEMBER HIM BEING THE MOST ANGRY, I WAS

8 ON MY PHONE AND AT A MEETING OFF-SITE, SO I STEPPED OUT OF
9 THE MEETING TO TALK TO HIM.

10 Q. CAN YOU GIVE US SOME REFERENCE POINT FOR THE TIMING
11 OF THIS CONVERSATION RELATIVE TO THE FIRST OCTOBER 10 VOTE
12 ON THE NORCAL PROPOSAL?

13 A. I CAN'T OFF THE TOP OF MY HEAD, NO.

14 Q. IS THERE ANY DOCUMENT YOU COULD REFER TO THAT WOULD
15 ASSIST YOU IN THAT REGARD?

16 A. UH -- MAYBE MY CALENDAR, BECAUSE I REMEMBER THE
17 TYPE OF MEETING I STEPPED OUT OF.

18 Q. OKAY.

19 MR. FINKELSTEIN: LET ME MARK AS EXHIBIT 97 COPIES
20 OF CALENDAR PAGES. THEY ARE BATES STAMPED CC136 THROUGH
21 CC162.

22 THE FOREPERSON: SO MARKED.

23 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
24 JURY EXHIBIT 97.)

25 THE WITNESS: THANK YOU.

26 BY MR. FINKELSTEIN:

27 Q. LET ME REPRESENT TO YOU THESE CALENDAR PAGES ARE
28 PRODUCED BY YOUR OFFICE. DOES IT LOOK FAMILIAR?

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1197

1 A. OH, YEAH. BUSY.

2 Q. I NOTICE SOME OF THE PAGES HAVE CIRCLES ON THEM.
3 WAS THAT PUT ON BY YOU, OR DID SOMEONE ELSE DO THAT?

4 A. YOU KNOW, I THINK IT WAS ME TRYING TO BE PREPARED
5 FOR TODAY.

- 6 Q. SO WHY DON' T YOU TAKE A MOMENT, LOOK THROUGH THE
7 CALENDAR, SEE IF THERE IS ANYTHING HERE THAT HELPS ASSIST
8 YOU IN RECOLLECTING THE TIME OF THE MEETING, DAY OF THE
9 MEETING.
- 10 A. MY BEST RECOLLECTION IS THAT IT COULD HAVE BEEN ON
11 FRIDAY, OCTOBER 6, BECAUSE THE EVENT I WAS AT WAS AN ALL-DAY
12 RETREAT.
- 13 Q. OKAY. LET' S TAKE A LOOK AT IT. SO YOU' RE
14 REFERRING TO THE ENTRY FOR FRIDAY, OCTOBER 6, 8: 30 TO 4: 30
15 P. M. , A-L-F, LEADERSHIP IN ACTION NUMBER THREE, AGILENT?
- 16 A. CORRECT.
- 17 Q. YOU BELIEVE IT WAS THIS FRIDAY THAT YOU HAD THE
18 UNPLEASANT CONVERSATION WITH MR. MORALES?
- 19 A. CORRECT.
- 20 Q. AND WHAT ABOUT THE TIME OF THE DAY, WHEN DO YOU
21 THINK IT TOOK PLACE?
- 22 A. I CAN' T REALLY RECALL IF IT WAS LUNCH TIME OR
23 AFTERNOON BREAK. WHEN YOU' RE PART OF THIS ORGANIZATION YOU
24 CAN' T TAKE PHONE CALLS DURING MEETINGS, SO I THINK IT WOULD
25 HAVE HAD TO HAVE BEEN SOMETHING LIKE AT A BREAK.
- 26 Q. YOUR BEST RECOLLECTION IT WAS A LUNCH BREAK OR
27 AFTERNOON BREAK?
- 28 A. RIGHT.

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1198

- 1 Q. WAS THERE, AND I TAKE IT THAT THIS IS YOUR
2 CALENDAR, CORRECT?
- 3 A. YES.

- 4 Q. IS THERE ANYTHING ELSE YOU RECALL ABOUT THAT
5 CONVERSATION?
- 6 A. UH -- THE ONLY THING IS THAT I REMEMBER BEING UPSET
7 BY IT, AND THAT I WAS UPSET ENOUGH ABOUT IT TO CALL AMY TO
8 TELL AMY, ONE, THAT I THOUGHT HIS CONDUCT WAS INAPPROPRIATE.
9 TWO, I DIDN'T WANT HIM CALLING MY OFFICE BECAUSE
10 TO FIND ME HE TALKED TO A COUPLE OF MY STAFF. I FOUND THAT
11 INAPPROPRIATE.
- 12 Q. APPARENTLY, HE HAD BEEN SOMEWHAT AGGRESSIVE IN
13 TRACKING YOU DOWN AND GETTING YOU ON THE PHONE?
- 14 A. YES.
- 15 Q. WOULD THAT BE THE WAY TO CHARACTERIZE IT?
- 16 A. MY RECOLLECTION IS YES.
- 17 Q. OKAY. NOW, PRIOR TO THE FIRST CITY COUNCIL VOTE ON
18 OCTOBER 10, 2000, HAD YOU MET WITH ANY REPRESENTATIVES OF
19 NORCAL?
- 20 A. I CAN LOOK.
- 21 Q. SURE. THAT'S WHY WE HAVE IT HERE.
- 22 A. YES.
- 23 Q. WHEN DID YOU MEET WITH NORCAL REPRESENTATIVES?
- 24 A. THURSDAY, OCTOBER 5.
- 25 Q. IS THAT THE ENTRY FOR 1:15 TO 2:00 P.M. ?
- 26 A. CORRECT.
- 27 Q. WHO DID YOU MEET WITH?
- 28 A. ED MCGOVERN.

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1199

- 1 Q. WHO IS ED MCGOVERN ?

- 2 A. ED MCGOVERN IS A REPRESENTATIVE FOR NORCAL, A
3 LOBBYIST FOR NORCAL, OR WAS AT THE TIME.
- 4 Q. WHERE DID MEETING TAKE PLACE?
- 5 A. MY OFFICE.
- 6 Q. WHO ELSE WAS PRESENT?
- 7 A. I DON'T RECALL.
- 8 Q. WHAT WAS SAID?
- 9 A. UH -- I DON'T RECALL THE DETAILS, BUT I THINK
10 EVERYONE WHO CAME TO SEE ME, THEY WERE FROM NORCAL, OR
11 WHOEVER EITHER WANTED US TO VOTE FOR IT OR DIDN'T, DEPENDING
12 ON WHETHER OR NOT THEY WERE AWARDED THE CONTRACT.
- 13 Q. SO HOW WOULD YOU CHARACTERIZE THIS MEETING?
- 14 A. (NO RESPONSE.)
- 15 Q. WAS THIS A MEET AND GREET, WAS THIS DO YOU HAVE ANY
16 QUESTIONS ABOUT THE PROPOSAL OR LET ME TELL YOU ABOUT
17 NORCAL, WE'RE REALLY GREAT BECAUSE OF X, Y, Z, OR NONE OF
18 THE ABOVE?
- 19 A. I DON'T RECALL WITH SPECIFICITY THE MEETING. I
20 KNOW WHENEVER WE TAKE A VOTE ON SOMETHING BIG, WE OFTEN HAVE
21 PEOPLE COMING TO TELL US HOW GREAT THEIR COMPANY IS, WHY
22 IT'S A GOOD IDEA. I'M SURE IT WAS NO DIFFERENT.
- 23 Q. WAS THERE ANY DISCUSSION IN MEETING WITH THE
24 LOBBYIST MR. MCGOVERN ABOUT CWS, WHICH UNION HE WAS GOING TO
25 BE USING?
- 26 A. NOT TO MY RECOLLECTION, NO.
- 27 Q. OKAY. SO I TAKE IT YOU DID ATTEND THE OCTOBER 10,
28 2000 VOTE ON THE NORCAL PROPOSAL, THE COUNCIL VOTE?

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1 A. YES.

2 Q. DID THE CITY COUNCIL ADOPT THE RECOMMENDATIONS
3 CONTAINED IN THE OCTOBER 8 MEMO TO COUNCIL?

4 A. YES.

5 Q. SO THEY MADE A PRELIMINARY SELECTION OF NORCAL,
6 AMONG OTHERS, CORRECT?

7 A. CORRECT.

8 Q. THEY REFERRED THE PROPOSALS TO THE CITY AUDITOR FOR
9 A REVIEW?

10 A. CORRECT.

11 Q. AND THEN ASKED THEM TO BRING IT BACK TO THE COUNCIL
12 AFTER THE REVIEW WAS COMPLETED?

13 A. CORRECT.

14 Q. NOW, DURING THE DISCUSSION OF THE SELECTION OF
15 RECYCLE PLUS CONTRACTORS, THAT WAS A FAIRLY LENGTHY COUNCIL
16 MEETING, WAS IT NOT, COUNCIL ISSUE, WAS IT NOT?

17 A. COULD YOU RESTATE THE QUESTION?

18 Q. THAT WAS A BAD QUESTION. WHEN THE COUNCIL TOOK UP
19 THE SELECTION OF THE RECYCLE PLUS VENDOR SELECTION, THAT
20 ISSUE TOOK UP A SIGNIFICANT AMOUNT OF TIME, DID IT NOT?

21 A. ON THE DATE OF THAT VOTE? I DON'T RECALL HOW LONG
22 THE DISCUSSION WAS.

23 Q. OKAY. DID VARIOUS COUNCIL MEMBERS SPEAK ON THE
24 ISSUE?

25 A. I DON'T RECALL, WITH SPECIFICITY THAT MEETING. I
26 FEEL PART OF THE REASON I'M HAVING A HARD TIME ANSWERING
27 YOUR QUESTION IS THAT WE HAD SO MANY MEETINGS ON THIS TOPIC
28 AND THEY ALL FELT VERY LONG TO ME.

1 Q. FAIR ENOUGH. OKAY. I UNDERSTAND IT NOW YOUR
2 RECOLLECTION IS SUCH YOU DON'T THINK YOU CAN TESTIFY
3 ACCURATELY.

4 I THINK WE'RE GOING TO HAVE TAKE A LOOK AT THE
5 COUNCIL MEETING, UNFORTUNATELY, AND WATCH IT ALL TOGETHER.

6 A. I'M SORRY.

7 Q. THAT'S OKAY. I JUST NEED A MINUTE TO SET UP.

8 I WILL MARK AS EXHIBIT 98 A CERTIFIED COPY OF A
9 DVD RECORDING OF THE OCTOBER 10, 2000 SAN JOSE CITY COUNCIL
10 MEETING.

11 THE FOREPERSON: SO MARKED.

12 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
13 JURY EXHIBIT 98.)

14 BY MR. FINKELSTEIN:

15 Q. THIS HAS CLOSED CAPTIONS, SO I'LL ASK THE REPORTER
16 NOT TO TRY TAKE DOWN THE AUDIO.

17 (PLAYING VIDEO.)

18 BY MR. FINKELSTEIN:

19 Q. I PAUSED THE VIDEO BECAUSE I WANT TO ASK YOU A
20 QUESTION AT THIS TIME. APPARENTLY -- YOU JUST SAW
21 CARL MOSHER EXPLAINING THE STAFF RECOMMENDATION TO THE CITY
22 COUNCIL, CORRECT?

23 A. CORRECT.

24 Q. AND THE STAFF RECOMMENDATION CONTEMPLATED THAT
25 THERE WOULD BE A SELECTION ON OCTOBER 10, CONTRACTS WOULD
26 HAVE BEEN NEGOTIATED AND WOULD COME BACK TO COUNCIL IN
27 DECEMBER 2000 FOR THE VOTE. ISN'T THAT WHAT MR. MOSHER JUST
28 TOLD US?

1 A. CORRECT.

2 Q. WHEREAS YOUR RECOMMENDATION INCLUDED IN THE OCTOBER
3 8 MEMO WAS TO LENGTHEN THE PROCESS A LITTLE BIT BY INCLUDING
4 AN EXTRA STEP, NAMELY REVIEW BY THE CITY AUDITOR, CORRECT?

5 A. THAT'S CORRECT.

6 Q. OKAY.

7 (PLAYING VIDEO.)

8 BY MR. FINKELSTEIN:

9 Q. WE JUST HEARD SOME REMARKS BY MAYOR GONZALES AT THE
10 COUNCIL MEETING, CORRECT?

11 A. CORRECT.

12 Q. HE TALKED ABOUT, AMONG OTHER THINGS, LABOR PEACE,
13 CORRECT?

14 A. CORRECT.

15 Q. AND LABOR PEACE WAS ONE OF THE REQUIREMENTS IN THE
16 RFP, CORRECT?

17 A. CORRECT.

18 Q. AND WHAT DID YOU UNDERSTAND THE TERM LABOR PEACE TO
19 MEAN?

20 A. LABOR PEACE MEANT THAT THE EMPLOYERS AND EMPLOYEE
21 ORGANIZATIONS, OR EMPLOYEES IF THEY WERE NOT REPRESENTED BY
22 A UNION OR SOME SORT OF ASSOCIATION, WOULD UNDERSTAND THAT
23 ANY DISRUPTION TO SERVICE WOULD BE A PROBLEM, EITHER FOR THE
24 CONTRACT OR PRIMARILY FOR THE CONTRACTOR.

25 Q. SO -- WOULD ONE DEFINITION THAT YOU WOULD AGREE
26 WITH OF LABOR PEACE BE ARRANGEMENTS WERE IN PLACE TO
27 MINIMIZE ANY DISRUPTIONS FROM ACTIONS BY, WORK ACTIONS BY

28 EMPLOYEES?

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1203

1 A. YES.

2 Q. OKAY. NOW, SO FAR IN THE COUNCIL MEETING WE HEARD
3 MAYOR GONZALES' S REMARKS. DID HE SAY ANYTHING ABOUT ANY
4 CONCERNS ABOUT THE CWS MRF WORKERS BEING REPRESENTED
5 PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT WITH THE ILWU
6 THAT PROVIDED FOR LESSER WAGES AND BENEFITS THAN THE
7 TEAMSTERS?

8 A. JUST NOW?

9 Q. YES.

10 A. NO.

11 Q. SORRY?

12 A. NO.

13 Q. SO FAR IN THE COUNCIL MEETING, DID THE MAYOR SAY
14 ANYTHING ABOUT PROMISES OR REPRESENTATIONS THAT MAY HAVE
15 BEEN MADE TO NORCAL?

16 A. NO.

17 (PLAYING VIDEO.)

18 BY MR. FINKELSTEIN:

19 Q. NOW, WE JUST HEARD MR. MOSHER REFER TO THE
20 MAYOR' S MEMORANDUM. WOULD THAT BE THE OCTOBER 8, 2000
21 MEMORANDUM?

22 A. I BELIEVE SO.

23 Q. WE JUST HEARD COUNCILMEMBER LEZOTTE EXPRESS HER
24 DESIRE TO KNOW MORE ABOUT ANY POTENTIAL LIABILITIES THAT
25 NORCAL MIGHT HAVE THAT COULD IMPACT THEIR FINANCIAL ABILITY

26 TO PERFORM THE CONTRACT, CORRECT?

27 A. CORRECT.

28 Q. YOU KNOW, I'M JUST NOTICING IT'S ABOUT QUARTER TO

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1204

1 3:00. WHY DON'T WE TAKE A FIVE-MINUTE BREAK.

2 THE FOREPERSON: LET ME READ A CONFIDENTIALITY
3 ADMONITION TO YOU THAT APPLIES NOT ONLY TODAY, BUT AFTER
4 THIS SESSION.

5 YOU ARE ADMONISHED NOT TO REVEAL TO ANY PERSON,
6 EXCEPT AS DIRECTED BY THE COURT, WHAT QUESTIONS WERE ASKED
7 OR WHAT RESPONSES WERE GIVEN OR ANY OTHER MATTERS CONCERNING
8 THE NATURE OR SUBJECT OF THE GRAND JURY'S INVESTIGATION
9 WHICH YOU LEARNED DURING YOUR APPEARANCE BEFORE THE GRAND
10 JURY, UNLESS AND UNTIL SUCH TIME AS THE TRANSCRIPT OF THIS
11 GRAND JURY PROCEEDING IS MADE PUBLIC. VIOLATION OF THIS
12 ADMONITION MAY BE PUNISHABLE AS A CONTEMPT OF COURT.

13 DO YOU UNDERSTAND THAT?

14 THE WITNESS: I DO. THANK YOU.

15 MR. FINKELSTEIN: SEE YOU IN ABOUT FIVE MINUTES.
16 JUST WAIT OUTSIDE.

17 (A BRIEF RECESS WAS TAKEN.)

18 BY MR. FINKELSTEIN:

19 Q. I'LL JUST REMIND YOU YOU'RE STILL UNDER OATH,
20 HAVING BEEN SWORN IN THIS INVESTIGATION; DO YOU UNDERSTAND
21 THAT?

22 A. I DO.

23 Q. NOW, WHEN WE RECESSED WE HEARD COUNCILMEMBER

24 LEZOTTE MAKE AN INQUIRY ABOUT WHETHER NORCAL HAD, OR ANY
25 OTHER VENDORS HAD ANY ADDITIONAL LIABILITIES THAT THE
26 COUNCIL WAS NOT AWARE OF OR THAT STAFF WAS NOT AWARE OF,
27 CORRECT?

28 A. CORRECT.

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1205

1 Q. LET ME SHOW YOU GRAND JURY EXHIBIT 15. TAKE A LOOK
2 AT THIS DOCUMENT, PLEASE.

3 HAVE YOU SEEN THAT DOCUMENT BEFORE?

4 A. I HAVE NOT.

5 Q. OKAY. LET ME JUST ORIENT YOU TO THE DOCUMENT. THE
6 DOCUMENT IS LABELED, "ADDENDUM TO AGREEMENT BETWEEN NORCAL
7 WASTE SYSTEMS, INC. AND CALIFORNIA WASTE SOLUTIONS, INC. FOR
8 PROCESSING RESIDENTIAL RECYCLABLES FROM THE CITY OF
9 SAN JOSE," CORRECT?

10 A. CORRECT.

11 Q. THE DOCUMENT PURPORTS TO CONTAIN THE SIGNATURE OF
12 BOTH NORCAL'S PRESIDENT AND CWS'S PRESIDENT, CORRECT?

13 A. CORRECT.

14 Q. THE SIGNATURE DATE IS OCTOBER 9, 2000, CORRECT?

15 A. CORRECT.

16 Q. WHICH WOULD HAVE BEEN THE DAY BEFORE THE OCTOBER 10
17 COUNCIL MEETING WE HAVE BEEN WATCHING, CORRECT?

18 A. CORRECT.

19 Q. THE SECOND PARAGRAPH OF THE DOCUMENT IN SUBSTANCE
20 SAYS THAT NORCAL IS GOING TO REIMBURSE CWS FOR THE EXTRA
21 LABOR COSTS, WAGES, AND BENEFITS FOR CWS PAYING HIGHER WAGES

22 AND BENEFITS THAN WHAT WAS SET OUT IN THE NORCAL PROPOSAL,
23 CORRECT?

24 A. CORRECT.

25 Q. AND WE NOW KNOW BASED ON THE EVENTS IN 2004 THAT
26 THAT WAS APPROXIMATELY \$11 MILLION, CORRECT?

27 A. CORRECT.

28 Q. SO THIS WOULD BE AN ADDITIONAL LIABILITY THAT

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1206

1 NORCAL WAS UNDERTAKING ON THAT DATE OF SOME \$10 MILLION, \$11
2 MILLION, CORRECT?

3 A. CORRECT. I DON'T KNOW AT THE TIME --

4 Q. I UNDERSTAND. YOU JUST TOLD US YOU HAD NOT SEEN IT
5 BEFORE.

6 A. NO, NO, NO. I DIDN'T KNOW AT THE TIME IF THERE WAS
7 ANYTHING ATTACHED TO THIS WITH AMOUNTS OF MONEY. I DO KNOW
8 WHAT THE END RESULT WAS.

9 Q. WE'VE SEEN THINGS WITH WHAT THE ESTIMATES WERE AT
10 THE TIME. WOULD INFORMATION ABOUT THIS DOCUMENT HAVE BEEN
11 RESPONSIVE TO COUNCILMEMBER LEZOTTE'S INQUIRY ABOUT
12 ADDITIONAL LIABILITIES?

13 A. YES.

14 Q. THE FIRST PARAGRAPH OF THIS DOCUMENT HAS A RECITAL
15 THAT READS THE PARTIES HAVE LEARNED THAT THE CITY OF SAN
16 JOSE MAY REQUIRE CALIFORNIA WASTE SOLUTIONS, INC. AND NORCAL
17 WASTE SYSTEMS, INC. TO PROVIDE WAGE AND BENEFIT PACKAGES
18 THAT ARE DIFFERENT, IT SAYS "THAT" BUT IT MEANS "THAN,"
19 CWS' S CURRENT WAGE AND BENEFIT PACKAGES. DO YOU SEE THAT

20 SENTENCE?

21 A. I DO.

22 Q. DO YOU KNOW WHAT THE REFERENCE TO THE CITY OF
23 SAN JOSE REQUIREMENT IS ALL ABOUT?

24 A. I DO NOT.

25 Q. DO YOU HAVE ANY KNOWLEDGE ABOUT WHO IN THE CITY MAY
26 HAVE REQUIRED, IF ANYONE, NORCAL AND CWS TO PAY DIFFERENT
27 WAGES AND BENEFITS?

28 A. I DO NOT.

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1207

1 Q. TO YOUR RECOLLECTION, DID ANYONE AT THIS OCTOBER
2 10, 2000 COUNCIL MEETING DISCLOSE THE EXISTENCE OF THIS
3 ADDENDUM ENTERED INTO THE DAY BEFORE THE COUNCIL MEETING?

4 A. NOT TO MY RECOLLECTION.

5 Q. DID MAYOR GONZALES MAKE ANY REFERENCE TO THIS?

6 A. NOT TO MY RECOLLECTION.

7 Q. WHY DON'T WE CONTINUE WATCHING THE MOVIE OR THE
8 VIDEO?

9 (PLAYING VIDEO.)

10 BY MR. FINKELSTEIN:

11 Q. LET ME PAUSE THE VIDEO. I SHOULD STATE FOR THE
12 RECORD, EITHER THE VIDEO DOESN'T CONTAIN CLOSED CAPTIONING
13 OR I HAVEN'T QUITE FIGURED OUT HOW TO TURN IT ON; WE'LL HAVE
14 TO DEAL WITH THAT AT A LATER DATE.

15 COUNCILMEMBER CHAVEZ, WE HAVE BEEN LISTENING TO
16 THE COUNCIL MEETING AND NOW WE'RE HEARING FROM COUNCILMEMBER
17 DIQUISTO.

- 18 A. THAT' S CORRECT.
- 19 Q. HE JUST RAISED A QUESTION ABOUT THE LABOR UNIONS
20 AND WHO IS REPRESENTING THE DIFFERENT EMPLOYEES, CORRECT?
- 21 A. CORRECT.
- 22 Q. AND WE HEARD THE MAYOR RESPOND IN PART ABOUT
23 REPRESENTATION, CORRECT?
- 24 A. RESPOND?
- 25 Q. HE MADE SOME COMMENT, HE CLARIFIED FOR DIRECTOR
26 MOSHER THE QUESTION POSED BY COUNCILMEMBER DIQUISTO?
- 27 A. THAT' S CORRECT.
- 28 Q. HE ASKED ABOUT WHICH UNIONS ARE REPRESENTING WHOM,

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1208

- 1 RIGHT?
- 2 A. CORRECT.
- 3 Q. AND WE'VE JUST HEARD MR. MOSHER SAY THAT THAT' S
4 NOT, WHICH UNIONS ARE REPRESENTING IS NOT A MATTER FOR THE
5 CITY?
- 6 A. THAT' S CORRECT.
- 7 Q. DID MAYOR GONZALES AT THIS POINT IN THE MEETING AT
8 LEAST MENTION ANYTHING ABOUT ANY ISSUE BETWEEN THE TEAMSTERS
9 AND THE ILWU CONCERNING CWS MRF WORKERS?
- 10 A. NO.
- 11 (PLAYING VIDEO)
- 12 MR. FINKELSTEIN:
- 13 Q. I'LL STOP THE VIDEO AGAIN. WE JUST HEARD THE MAYOR
14 TELL COUNCILMEMBER DIQUISTO IN RESPONSE TO QUESTIONS ABOUT
15 THE LABOR CONTRACT THAT THE HAULERS MAY ENTER INTO WITH THE

16 UNIONS THERE IS NO GUARANTEE ABOUT WHAT KIND OF CONTRACT
17 THEY MIGHT HAVE, CORRECT?

18 A. THAT' S CORRECT.

19 (PLAYING VIDEO.)

20 BY MR. FINKELSTEIN:

21 Q. I SHOULD INDICATE WE FIGURED OUT HOW TO TURN THE
22 CLOSED CAPTIONING BACK ON. WE JUST HEARD CARL MOSHER
23 EXPLAIN ONE OF THE PROVISIONS IN THE CONTRACT, THAT THERE' S
24 A PROVISION FOR INCREASED COMPENSATION TO THE HAULERS BASED
25 ON A CPI ADJUSTMENT, BUT ON NO OTHER BASIS, CORRECT?

26 A. CORRECT.

27 Q. SO FOR EXAMPLE, IF ONE OF THE HAULERS NEGOTIATED A
28 NEW COLLECTIVE BARGAINING AGREEMENT WITH AN INCREASE IN WAGE

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1 AND BENEFIT COSTS UNDER THE CONTRACT THAT WAS BEING PROPOSED
2 AT THAT TIME, OCTOBER OF 2000, THAT HAULER WOULD NOT HAVE
3 THE RIGHT UNDER THE CONTRACT FOR ADDITIONAL COMPENSATION?

4 A. THAT' S CORRECT.

5 Q. THE HAULER WOULD HAVE TO ABSORB THE COST?

6 A. THAT' S CORRECT.

7 Q. THANK YOU.

8 (PLAYING VIDEO.)

9 BY MR. FINKELSTEIN:

10 Q. I WILL STOP THE VIDEO AGAIN. THE MAYOR JUST
11 INDICATED THAT, AT THIS POINT IN THE VIDEO, WE HEARD FROM
12 COUNCILMEMBERS WHO CARED TO MAKE COMMENTS, CORRECT?

13 A. RIGHT.

14 Q. NOW THE MAYOR IS GOING TO TURN IT OVER TO THE
15 PUBLIC. THUS FAR, HAVE YOU HEARD THE MAYOR OR ANYONE ELSE
16 SAY ANYTHING ABOUT A POTENTIAL PROBLEM WITH CWS MRF WORKERS'
17 REPRESENTATION, UNION REPRESENTATION?

18 A. JOHN DIQUISTO.

19 Q. HE ASKED WHETHER THERE WAS AN ISSUE?

20 A. CORRECT.

21 Q. THAT WAS NOT FOCUSED ON CWS, WAS IT?

22 A. I DON'T KNOW IF HE WAS MAKING A DETERMINATION
23 BETWEEN ONE UNION OR THE OTHER OR WHAT WORKERS, THE
24 CATEGORIES OF WORKERS.

25 Q. HE RAISED A GENERAL QUESTION ABOUT UNION
26 REPRESENTATION?

27 A. SO DID MR. DIAZ.

28 Q. YES. MR. DIAZ, YES. DID THE MAYOR SAY ANYTHING

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1 ABOUT ANY MEETINGS HE MIGHT HAVE HAD WITH MR. MORALES OR
2 NORCAL OR CWS ABOUT THAT ISSUE?

3 A. NO, HE DID NOT.

4 (PLAYING VIDEO.)

5 BY MR. FINKELSTEIN:

6 Q. LET ME STOP THE VIDEO. WE HAVE BEEN LISTENING TO
7 COMMENTS FROM THE PUBLIC, SPECIFICALLY MR. MORALES FROM THE
8 TEAMSTERS, CORRECT?

9 A. CORRECT.

10 Q. AND HE MADE A COMMENT ABOUT HAVING A GOOD
11 RELATIONSHIP WITH NORCAL AND THE EXISTING VENDORS.

- 12 A. CORRECT.
- 13 Q. HE ALSO SAID IT WAS A PROBLEM WITH NORCAL'S
14 SUBCONTRACTOR, CWS, RIGHT?
- 15 A. CORRECT. THERE WAS A PROBLEM.
- 16 Q. BEAR WITH ME FOR A MOMENT. LET ME HAVE YOU TAKE A
17 LOOK AT EXHIBIT 16. THIS IS AN OCTOBER 9 FAXED LETTER TO
18 MAYOR RON GONZALES. HAVE YOU SEEN THIS LETTER BEFORE?
- 19 A. NO.
- 20 Q. NOW, IN THIS LETTER, THIS LETTER APPEARS TO BE A
21 LETTER FROM CALIFORNIA WASTE SOLUTIONS PRESIDENT VICTOR
22 DUONG?
- 23 A. CORRECT.
- 24 Q. IN THIS LETTER DATED OCTOBER 9, DOES MR. DUONG
25 ADVISE THE MAYOR THAT CWS WILL PAY SORTERS HIRED PURSUANT TO
26 RECYCLE PLUS AWARD WAGE AND BENEFITS AT LEAST EQUIVALENT TO
27 THOSE PRESENTLY BEING PAID TO WORKERS OCCUPYING THOSE
28 POSITIONS UNDER THE CURRENT AGREEMENTS IN SAN JOSE? IS THAT

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- 1 WHAT THE LETTER SAYS?
- 2 A. YES.
- 3 Q. AND THERE'S A HANDWRITTEN NOTE ON THE TOP UPPER
4 RIGHT-HAND CORNER, IT SAYS "FILE RECYCLE PLUS." DO YOU SEE
5 THAT?
- 6 A. I DO.
- 7 Q. DO YOU HAVE ANY IDEA WHOSE WRITING THAT IS?
- 8 A. I DO NOT.
- 9 Q. SO I WOULD YOU LIKE TO LISTEN CAREFULLY, AS YOU

10 HAVE BEEN, I WILL CONTINUE THE VIDEO IN A MINUTE, AND TELL
11 US WHETHER THE MAYOR IN RESPONSE TO MR. MORALES' S CONCERNS
12 AT THIS PUBLIC COUNCIL MEETING ON OCTOBER 10, THE DAY AFTER
13 THAT LETTER IS DATED, RESPONDS IN ANY WAY TO INDICATE THAT
14 HE' S GOT SOME ASSURANCES FROM CWS THAT IT WILL PAY AT LEAST
15 THE EXISTING WAGES AND BENEFITS. OKAY?

16 (PLAYING VIDEO.)

17 BY MR. FINKELSTEIN:

18 Q. SO, MR. MORALES JUST FINISHED HIS REMARKS TO THE
19 MAYOR, CORRECT?

20 A. CORRECT.

21 Q. AND DID THE MAYOR RESPOND IN ANY WAY ABOUT ANY
22 ASSURANCES THAT HE HAD GOTTEN FROM CWS ABOUT CWS AGREEING TO
23 PAY WAGES AND BENEFITS NO LESS THAN THE EXISTING WAGES AND
24 BENEFITS?

25 A. NO.

26 Q. AND YOU HAVE BEEN HEARING THE TAPE WITH THE REST OF
27 US, AND WHEN MR. MORALES MADE A COMMENT, AND I CAN PLAY IT
28 BACK IF YOU LIKE, ABOUT AFTER LISTENING TO THE ASSURANCES

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1212

1 FROM THE MAYOR THAT THESE MATTERS WERE GOING TO BE RESOLVED.
2 DID YOU HEAR ANY ASSURANCES FROM THE MAYOR EXPRESSED AT THIS
3 PUBLIC MEETING?

4 A. I DID, AT THE BEGINNING WHEN HE TALKED ABOUT HIS
5 EMPHASIS ON LABOR PEACE.

6 Q. WELL, DOES LABOR PEACE MEAN THAT ANY DISPUTE
7 BETWEEN COMPETING UNIONS WOULD BE RESOLVED?

8 A. NO, BUT IT DOES MEAN THAT, I THINK -- I COULDN'T
9 INTERPRET WHAT HE WAS SAYING, BUT HAD I SAID THAT, I WOULD
10 HAVE BEEN TELLING PEOPLE, I'M PAYING ATTENTION TO THE
11 PROBLEM, BECAUSE WE DON'T WANT GARBAGE PILING UP IN THE
12 STREETS.

13 Q. DOES LABOR PEACE REQUIRE THAT A NEW VENDOR AGREE TO
14 BE BOUND BY THE FORMER VENDOR'S COLLECTIVE BARGAINING
15 AGREEMENT?

16 A. NO, IT DOES NOT.

17 Q. THAT'S WHAT MR. MORALES SEEMED TO BE CONCERNED
18 ABOUT, WAS IT NOT? DO YOU WANT ME PLAY IT BACK?

19 A. NO, I DON'T NEED YOU TO PLAY IT BACK. IT SOUNDS TO
20 ME LIKE BOBBY MORALES' CONCERNS ARE AT LEAST TWO PARTS. ONE
21 PRIMARILY BEING A JURISDICTIONAL ISSUE, THE SECOND BEING THE
22 TREATMENT OF THE WORKERS AND THEIR OPPORTUNITY.

23 Q. RIGHT. AND WE DIDN'T HEAR MAYOR GONZALES SAY
24 ANYTHING ABOUT HAVING GOTTEN THIS ASSURANCE FROM CWS THE DAY
25 BEFORE, ON OCTOBER 9, IN THE LETTER, DO WE?

26 A. THAT'S CORRECT.

27 (PLAYING VIDEO.)

28 BY MR. FINKELSTEIN:

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1213

1 Q. WE JUST HEARD KEN ABSALOM, A LAWYER FROM THE
2 TEAMSTERS, RAISE THE ISSUE OF THE NEUTRALITY AGREEMENTS,
3 CORRECT?

4 A. THAT'S CORRECT.

5 Q. THEY ARE SOMETIMES CALLED CARD CHECK AGREEMENTS?

- 6 A. THAT' S CORRECT.
- 7 Q. THE WAY IT WORKS IS, THIS IS A SUBSTITUTE PROCEDURE
8 FOR AN NLRB SUPERVISED ELECTION?
- 9 A. THAT' S CORRECT.
- 10 Q. IN OTHER WORDS, THE EMPLOYEES FILL OUT PREFERENCE
11 CARDS AND INDICATE WHAT UNION THEY WANT TO BE REPRESENTED
12 BY, AND THE UNION WITH A MAJORITY OF THE CARDS WINS,
13 ESSENTIALLY?
- 14 A. THAT' S ONE WAY THAT IT WORKS, YES.
- 15 Q. RIGHT. I THINK AT THE TIME THAT KEN ABSALOM WAS
16 MAKING THE STATEMENT, WAS IT YOUR UNDERSTANDING, THAT THE
17 CITY COULD NOT REQUIRE NEUTRALITY AGREEMENTS BY THE VENDORS
18 AS A CONDITION OF GETTING AN AWARD FROM THE CITY?
- 19 A. THAT IS CORRECT.
- 20 Q. AS A MATTER OF FACT, A FEW WEEKS LATER THE CITY
21 ATTORNEY ISSUED A WRITTEN OPINION SAYING AS MUCH, ISN' T THAT
22 TRUE?
- 23 A. I DON' T RECALL THE WRITTEN OPINION. I DO BELIEVE
24 THAT' S RIGHT.
- 25 Q. LET ME SEE IF I CAN FIND IT. WHY DON' T YOU TAKE A
26 LOOK AT EXHIBIT 20.
- 27 A. THANK YOU.
- 28 Q. DO YOU RECALL SEEING THAT MEMORANDUM BEFORE?

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1214

- 1 A. I DON' T RECALL IT, BUT THE LANGUAGE SOUNDS
2 FAMILIAR. I DON' T RECALL SPECIFICALLY THE DOCUMENT.
- 3 Q. OKAY. AT THE BOTTOM OF PAGE ONE THERE' S

4 A DISCUSSION ABOUT SEVERAL SPEAKERS AT THE COUNCIL MEETING
5 URGING THE COUNCIL TO ADD THE NEW PROVISION TO PROPOSED
6 CONTRACTS, A NEUTRALITY AGREEMENT, CORRECT?

7 A. YES.

8 Q. AND THE MEMO GOES ON TO EXPLAIN WHAT A NEUTRALITY
9 AGREEMENT IS?

10 A. IT DOES.

11 Q. AND THEN THE MEMO SAYS THAT A CITY REQUIREMENT, THE
12 PROPOSERS, THAT'S THE TERM, IT REFERS TO THE HAULERS THAT
13 ARE SEEKING THESE CONTRACTS, RIGHT?

14 A. CORRECT.

15 Q. THE CITY REQUIREMENT THAT PROPOSERS ENTERING INTO
16 NEUTRALITY AGREEMENTS OR AGREE TO NEUTRALITY PROVISIONS ARE
17 RAISING VERY SERIOUS LEGAL CONCERNS ON TWO LEVELS.

18 FIRST, FEDERAL LABOR LAW PROHIBITS A CITY FROM
19 INTERFERING WITH THE COLLECTIVE BARGAINING PROCESS REGULATED
20 BY FEDERAL LAW, CORRECT?

21 A. CORRECT.

22 Q. THIS WAS A MEMO THAT TO YOUR KNOWLEDGE WAS
23 DISTRIBUTED TO THE ENTIRE COUNCIL?

24 A. YES, IT APPEARS TO ME THAT --

25 Q. AS A MATTER OF FACT, IF YOU LOOK AT THE FIRST PAGE
26 OF THE MEMO, THERE'S A REFERENCE TO IT BEING PART OF THE
27 RECORD FOR THE NOVEMBER 7, 2000 COUNCIL MEETING, AGENDA ITEM
28 9B.

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1215

1 A. CORRECT.

2 Q. THAT SUGGESTS TO YOU, DOES IS NOT, THAT IT WAS
3 TRANSMITTED TO THE COUNCIL AND MADE PART OF THE OFFICIAL
4 RECORD?

5 A. IT DOES.

6 Q. THEN THE MEMO GOES ON TO RECITE THE EMPLOYEES OF
7 NORCAL SUBCONTRACTOR, CALIFORNIA WASTE SOLUTIONS, INC. ARE
8 CURRENTLY REPRESENTED BY A LABOR ORGANIZATION, DOES IT NOT?

9 A. CORRECT.

10 Q. AND THAT WOULD BE THE ILWU, CORRECT?

11 A. CORRECT.

12 Q. AND THE MEMO CONCLUDES THAT PARAGRAPH BY SAYING AS
13 SUCH, THERE IS LITTLE CITY BUSINESS INTEREST OR
14 JUSTIFICATION IN REQUIRING NEUTRALITY AGREEMENTS IN THIS
15 CASE, RIGHT?

16 A. RIGHT.

17 Q. THE NEXT PARAGRAPH TALKS ABOUT REQUIRING NEUTRALITY
18 AGREEMENTS CALLING INTO QUESTION THE INTEGRITY OF THE RFP
19 PROCESS BECAUSE IT WAS NEVER A SPECIFICATION OF THE RFP,
20 CORRECT?

21 A. RIGHT.

22 Q. SO BASED ON YOUR VAST EXPERIENCE IN ORGANIZED
23 LABOR, DO YOU AGREE WITH THE CONCLUSION OF THIS MEMO?

24 A. I DID NOT AGREE WITH THE VERDICT THAT IT WOULD BE A
25 VIOLATION OF FEDERAL LABOR LAW, AND I DID NOT BECAUSE AS A
26 PROCURER OF SERVICES AND THE CITY BEING A PROCURER OF
27 SERVICES, WE HAVE A HIGH INTEREST ESPECIALLY RELATING TO
28 THINGS LIKE GARBAGE, THAT YOU DON'T HAVE GARBAGE PILING UP

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1 ON PEOPLE'S STREETS. BUT I'M NOT AN ATTORNEY, AND I LIKE TO
2 ARGUE WITH OUR CITY ATTORNEY QUITE A LOT. THIS WOULD HAVE
3 BEEN SOMETHING I ARGUED WITH HIM ABOUT.

4 Q. DID YOU IN THIS CASE?

5 A. I HAVE A HARD TIME BELIEVING I DIDN'T, BUT I MAY
6 NOT HAVE. I THINK WHAT IS COMPELLING TO ME ABOUT THIS IS
7 THAT IT WAS NOT PART OF THE ORIGINAL REQUEST FOR PROPOSALS.

8 Q. I THINK EARLIER THIS AFTERNOON, AT THE START OF
9 YOUR TESTIMONY, I WENT THROUGH A SERIES OF QUESTIONS, AND I
10 THINK YOU TOLD US THE CITY COULD NOT HAVE LAWFULLY REQUIRED
11 THE PROPOSERS TO GO WITH ONE UNION VERSUS ANOTHER, CORRECT?

12 A. THAT'S CORRECT.

13 Q. I SEE THAT IT'S ALMOST 4:00 O'CLOCK, SO WE'RE GOING
14 TO HAVE TO RECESS FOR THE EVENING. AND I HATE TO DO THIS TO
15 YOU, BUT WE'LL NEED YOU TO COME BACK. WHY DON'T WE DISCUSS
16 THAT OFFLINE, WE DON'T HAVE TO DO IT ON THE RECORD, UNLESS
17 THERE IS ANYTHING ELSE THE JURORS WANT.

18 THE FOREPERSON: I THINK WE ALSO WANT TO, OFF THE
19 RECORD, TALK ABOUT SCHEDULING.

20 MR. FINKELSTEIN: YOU'RE NOT EXCUSED; THAT MEANS
21 YOU ARE STILL SUBJECT TO BEING RECALLED ON SUBPOENA. WE
22 WOULD LIKE TO GET YOU BACK NEXT WEEK SOME TIME. I'LL TALK
23 TO YOU ABOUT THAT IN A MOMENT.

24 THE WITNESS: ALL RIGHT.

25 MR. FINKELSTEIN: THANK YOU VERY MUCH FOR COMING
26 HERE THIS AFTERNOON.

27 THE FOREPERSON: LET ME ALSO REMIND YOU OF THE
28 CONFIDENTIALITY ADMONITION, WHICH IS DURABLE UNTIL THE COURT

1 CHOOSES TO RELEASE THE TRANSCRIPT OF THIS PROCEEDING.
2 YOU' RE NOT TO TALK WITH ANYONE ABOUT THE CONTENT OF WHAT WAS
3 SAID.

4 THE WITNESS: I UNDERSTAND. THANK YOU.

5 THE FOREPERSON: LET' S ADJOURN THIS SESSION FOR
6 TODAY AND GO OFF THE RECORD.

7 (COURT WAS ADJOURNED FOR THE DAY.)

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1218

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REPORTER' S CERTIFICATE

I, SUE HERFURTH, DO HEREBY CERTIFY THAT THE FOREGOING IS A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HAD IN THE WITHIN-ENTITLED ACTION HELD ON THE 4TH, 5TH AND 6TH DAY OF APRIL, 2006.

THAT I REPORTED THE SAME IN STENOTYPE, BEING THE QUALIFIED AND ACTING OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, APPOINTED TO SAID COURT, AND THEREAFTER THE SAME WAS TRANSCRIBED BY COMPUTER UNDER MY DIRECTION AS HEREIN APPEARS.

I HAVE ADHERED TO CIVIL CODE OF PROCEDURE SECTION 237(1)(2), SIXTH DISTRICT COURT OF APPEAL MISCELLANEOUS ORDER 96-02, BY SEALING THROUGH REDACTION OF ALL REFERENCES, IF ANY, TO JUROR-IDENTIFYING INFORMATION, INCLUDING BUT NOT LIMITED TO NAMES, ADDRESSES AND TELEPHONE NUMBERS.

DATED THIS 26TH DAY OF JUNE, 2006.

SUE HERFURTH, C. S. R.
CERTIFICATE NO. 9645

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