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

---000---

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SAN JOSE, CALIFORNIA

VOLUME 8
PAGES 1219-1400
APRIL 12, 2006
APRIL 13, 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

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I N D E X

W I T N E S S

P A G E

V O L U M E 8

CINDY CHAVEZ (CONT' D)	1222
CHARLES REED	1287
PAUL ROTTENBERG	1314

EXHIBIT LIST

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103	1386
104	1390

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1 SAN JOSE, CALIFORNIA

APRIL 12, 2006

2

3

PROCEEDINGS:

4

THE FOREPERSON: MR. (NAME REDACTED) IS STILL OUT
5 OF TOWN. ALL OTHER GRAND JURORS ARE PRESENT.

6

7

I WAS AUTHORIZED TO ADVISE YOU THAT THE GOOD NEWS
8 IS THAT THERE'S ONLY ABOUT 25 MINUTES OF COUNCIL MEETING DVD
9 THAT WE NEED TO WATCH. THE BAD NEWS IS THERE IS STILL 25
10 MINUTES OF THE COUNCIL MEETING TO WATCH. I'M ASSURED THAT'S
11 THE END, PROBABLY, OF THE VIDEOS THAT WE WILL NEED TO SEE.

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MR. FINKELSTEIN: THE WITNESS IS OUTSIDE, BUT
BEFORE I BRING HER IN I WANT TO TELL THE JURY, AS IN THE
CASE OF THE OTHER VIDEO WE WATCHED, PLEASE BEAR IN MIND WHAT
PEOPLE SAY OUTSIDE THIS GRAND JURY ROOM NOT UNDER OATH IS
WHAT WE CALL HEARSAY, AND YOU CAN CONSIDER THIS ONLY FOR THE
PURPOSE OF DETERMINING WHAT PEOPLE SAID, OR IN SOME CASES
WHAT THEY DIDN'T SAY, IN VARIOUS CONTEXTS, BUT IT CANNOT BE
CONSIDERED AS EVIDENCE THAT ANY OF THE THINGS THAT PEOPLE
SAY ARE NECESSARILY TRUE. AND THAT WOULD ALSO APPLY TO A
NUMBER OF DOCUMENTS AND LETTERS AND SO FORTH THAT WE HAVE
INTRODUCED DURING THE COURSE OF THIS HEARING. THEY ARE
THERE TO SHOW WHAT PEOPLE SAID AND WHAT THEIR RESPONSE WAS,
BUT IT'S ALL HEARSAY AND THEREFORE CANNOT BE CONSIDERED AS
EVIDENCE THAT WHAT SOMEONE SAID IN A LETTER WAS TRUE, ONLY
THAT'S WHAT THEY SAID. THAT'S WHAT THEY CLAIM, AND THAT'S
WHAT THE PERSON SAID IN RESPONSE.

THERE ARE SOME EXCEPTIONS THAT MAY APPLY, AND I
Page 3

28 WILL TALK ABOUT THAT LATER, BUT GENERALLY SPEAKING, IF IT'S

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1222

1 NOT SAID FROM THE WITNESS STAND, YOU SHOULD ASSUME IT'S
2 HEARSAY AND SHOULD NOT BE CONSIDERED BY YOU FOR THE TRUTH,
3 ONLY AS EVIDENCE OF WHAT THEY SAID. SO, JUST VERY BRIEFLY,
4 IF THIS WAS A CASE ABOUT WHETHER A CONTRACT EXISTED, THEN WE
5 WOULD HEAR EVIDENCE OF SOMEONE SAID, YOU PAY ME A THOUSAND
6 DOLLARS, ANOTHER PERSON SAID, I'LL PAINT YOUR HOUSE. THAT
7 DOESN'T PROVE THEY PAINTED THE HOUSE, JUST THAT THEY AGREED
8 TO PAINT THE HOUSE. ANY QUESTIONS ABOUT THAT? VERY GOOD.

9 LET ME HAVE THE WITNESS STEP BACK IN AND WE'LL
10 RESUME.

11 CINDY CHAVEZ,
12 HAVING BEEN PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

13 EXAMINATION:

14 BY MR. FINKELSTEIN:

15 Q. COUNCILMEMBER CHAVEZ, I'LL JUST CAUTION YOU, HAVING
16 BEEN PREVIOUSLY SWORN IN THIS INVESTIGATION, YOU'RE STILL
17 UNDER OATH. DO YOU UNDERSTAND?

18 A. I DO.

19 Q. I THINK WE HAVE ABOUT 25, 30 MINUTES LEFT OF THE
20 VIDEO; I WOULD LIKE TO COMPLETE THAT. HOPEFULLY, THAT WILL
21 BE THE END OF WATCHING VIDEOS OF COUNCIL MEETINGS, AT LEAST
22 FOR YOUR TESTIMONY. WHY DON'T I RESUME THE VIDEO. I MADE
23 NOTES OF WHERE WE LEFT OFF AND I THINK WE'RE AT THE RIGHT
24 PLACE.

25 (PLAYING VIDEO.)

26 BY MR. FINKELSTEIN:

27 Q. WE JUST HEARD A REPRESENTATIVE OF WASTE MANAGEMENT,
28 ONE OF THE CURRENT PROVIDERS, EXPRESS CONCERNS ABOUT

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1223

1 NORCAL'S ABILITY TO DELIVER AT THE PRICE QUOTED IN THEIR
2 PROPOSAL, CORRECT?

3 A. CORRECT.

4 Q. AND THE PERSON ALSO URGED THE COUNCIL TO HOLD
5 NORCAL TO THE PRICES IT QUOTED IN ITS PROPOSAL, CORRECT?

6 A. THAT'S CORRECT.

7 (PLAYING VIDEO.)

8 BY MR. FINKELSTEIN:

9 Q. OKAY. WE'VE JUST CONCLUDED WATCHING THE VIDEO OF
10 THE OCTOBER 10 COUNCIL MEETING CONCERNING THE SELECTION OF
11 HAULERS UNDER THE RFPS THAT ISSUED EARLIER THAT YEAR,
12 CORRECT?

13 A. THAT'S CORRECT.

14 Q. WE'VE HEARD THE MAYOR COMMENT SEVERAL TIMES AS WELL
15 AS NUMBER OF COUNCIL MEMBERS, AND YOURSELF INCLUDED, RIGHT?

16 A. THAT'S CORRECT.

17 Q. WE'VE ALSO HEARD REPRESENTATIVES FROM NORCAL;
18 MICHAEL SANGIACOMO AND BILL JONES, CORRECT?

19 A. CORRECT.

20 Q. I WANT TO ASK YOU SOME QUESTIONS ABOUT WHAT WAS AND
21 WHAT WASN'T SAID IN THIS COUNCIL MEETING DID THE MAYOR OR
22 NORCAL SAY ANYTHING AT THE COUNCIL VOTE ABOUT ANY PROMISES
23 OR REPRESENTATIONS THAT MAY HAVE BEEN MADE TO NORCAL OR CWS?

- 24 A. NO.
- 25 Q. DID THE MAYOR OR NORCAL SAY ANYTHING AT THE COUNCIL
- 26 VOTE ABOUT THE MAYOR DIRECTING NORCAL OR CWS TO USE THE
- 27 TEAMSTERS?
- 28 A. NO.

SUE HERFURTH, CSR #9645

1224

- 1 Q. DID THE MAYOR OR NORCAL SAY ANYTHING AT THE COUNCIL
- 2 VOTE ABOUT THE CITY NEEDING TO REIMBURSE NORCAL OR CWS FOR
- 3 ADDITIONAL LABOR COSTS NOT REFLECTED IN THE NORCAL PROPOSAL?
- 4 A. NO.
- 5 Q. THAT INFORMATION I JUST ASKED YOU ABOUT, WOULD THAT
- 6 HAVE BEEN INFORMATION THAT WOULD HAVE BEEN IMPORTANT TO YOU
- 7 AS A COUNCILMEMBER BEFORE CASTING YOUR VOTE ON THIS ISSUE?
- 8 A. YES.
- 9 Q. WHY IS THAT?
- 10 A. WELL, MY FIRST MEMO ON THIS ITEM CAME BEFORE
- 11 ACTUALLY THIS MEETING AND IT WAS AT A MEETING WE HAD PRIOR
- 12 TO THIS, AND THE AREAS I WAS MOST CONCERNED ABOUT WAS WORKER
- 13 RETENTION, LABOR PEACE, LOCAL PREFERENCE. AND GIVEN HOW
- 14 MANY PEOPLE CAME FORWARD AND SPOKE ABOUT THERE BEING
- 15 CONCERNS OR PROBLEMS, I WOULD HAVE WANTED TO KNOW WHETHER OR
- 16 NOT THESE CONCERNS OR PROBLEMS WERE ACTUALLY BEING
- 17 ADDRESSED, AND IF SO, HOW.
- 18 Q. WE HEARD A NUMBER OF PEOPLE REITERATE THEIR DESIRE,
- 19 A NUMBER OF COUNCILMEMBERS REITERATE THEIR DESIRE THAT THE
- 20 CITY AUDITOR LOOK CAREFULLY AT THE FINANCIAL ASPECTS OF
- 21 NORCAL' S PROPOSAL, CORRECT?

22 A. THAT'S CORRECT.

23 Q. AND WOULD YOU EXPECT THAT AN ADDITIONAL 10 MILLION
24 DOLLAR LIABILITY THAT NORCAL HAD UNDERTAKEN AFTER SUBMITTING
25 ITS PROPOSAL BEFORE THE COUNCIL VOTE WOULD HAVE BEEN
26 INFORMATION THAT YOU WOULD HAVE WANTED, ALONG WITH THE CITY
27 AUDITOR, TO KNOW ABOUT?

28 A. YES.

SUE HERFURTH, CSR #9645

1225

1 Q. DID YOU RECEIVE THAT INFORMATION?

2 A. WELL, THE AUDIT SHOWED --

3 Q. I MEAN AT THIS VOTE.

4 A. NO.

5 Q. OR PRIOR TO THE VOTE?

6 A. NO.

7 Q. AND YOU STARTED TO SAY SOMETHING ABOUT THE AUDIT.
8 DID THE AUDIT SHOW ANY ADDITIONAL LIABILITY UNDERTAKEN BY
9 NORCAL TO REIMBURSE CWS FOR EXTRA LABOR COSTS?

10 A. NO.

11 Q. NOW, PRIOR TO THIS VOTE, DID YOU SPEAK WITH ANY
12 REPRESENTATIVES OF NORCAL CONCERNING NORCAL'S PROPOSAL?

13 A. YES.

14 Q. AND DO YOU REMEMBER WHO AND WHEN AND WHERE THAT
15 TOOK PLACE?

16 A. I KNOW WE TALKED ABOUT THIS WHEN I WAS HERE LAST,
17 SO I'M ASSUMING, I RECALL THAT MOST OF THOSE WERE PROBABLY,
18 OR ALL OF THEM WERE PROBABLY IN MY OFFICE, AND I BELIEVE I
19 MET WITH ALMOST EVERYONE WHO CAME BEFORE US, FROM A

20 COMPANY PERSPECTIVE.

21 Q. DO YOU REMEMBER YOU MET WITH BILL JONES OR MICHAEL
22 SANGI ACOMO?

23 A. I DON'T REMEMBER MEETING WITH MIKE, BUT I DO
24 REMEMBER BILL JONES.

25 Q. DID HE OR ANYONE ELSE FROM NORCAL PRIOR TO THE VOTE
26 IN MEETINGS WITH YOU EVER SAY ANYTHING ABOUT PROMISES OR
27 REPRESENTATIONS THAT MAY HAVE BEEN MADE TO NORCAL OR CWS?

28 A. NO.

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1226

1 Q. DID NORCAL SAY ANYTHING PRIOR TO THE COUNCIL VOTE
2 TO YOU ABOUT THE MAYOR DIRECTING NORCAL OR CWS TO USE
3 TEAMSTERS?

4 A. NO.

5 Q. DID NORCAL SAY ANYTHING PRIOR TO THE COUNCIL VOTE
6 ABOUT THE CITY NEEDING TO REIMBURSE NORCAL OR CWS FOR
7 ADDITIONAL LABOR COSTS NOT REFLECTED IN THE NORCAL PROPOSAL?

8 A. NO.

9 Q. WHAT DID NORCAL TELL YOU PRIOR TO THE COUNCIL VOTE?

10 A. UH -- I DON'T REMEMBER SPECIFICALLY, BUT I REMEMBER
11 THAT EVERYONE WHO CAME BEFORE US TALKED ABOUT WHY THEIR BID
12 WAS THE RIGHT ONE, WHY SOMEONE ELSE'S BID WAS NOT. PEOPLE
13 WERE MORE REPRESENTING THEMSELVES IN TERMS OF WHY THEY WERE
14 THE ONES TO CHOOSE OR WHY NOT TO CHOOSE SOMEONE ELSE.

15 Q. ALL RIGHT. NOW, I NOTICE IT'S ALMOST 11:00
16 O'CLOCK; MAYBE WE SHOULD TAKE A FIVE-MINUTE RECESS.

17 THE FOREPERSON: LET'S RECESS FOR FIVE MINUTES. I

18 WOULD REMIND YOU OF THE CONFIDENTIALITY ADMONITION.

19 THE WITNESS: THANK YOU.

20 (A BRIEF RECESS WAS TAKEN.)

21 THE FOREPERSON: COULD WE COME BACK TO ORDER.

22 BY MR. FINKELSTEIN:

23 Q. FOLLOWING THE OCTOBER 10 COUNCIL MEETING, AN AUDIT
24 REPORT CAME BACK FROM THE CITY AUDITOR?

25 A. CORRECT.

26 Q. WAS THERE ANYTHING IN THE AUDIT REPORT THAT
27 DISCLOSED ANYTHING ABOUT THIS ADDITIONAL LIABILITY THAT
28 NORCAL HAD UNDERTAKEN TO REIMBURSE CWS FOR THESE EXTRA LABOR

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1227

1 COSTS NOT INCLUDED IN THEIR PROPOSAL?

2 A. NO.

3 Q. THEN THERE WAS A SECOND COUNCIL VOTE ON DECEMBER
4 12, I BELIEVE; IS THAT CORRECT?

5 A. AROUND THERE, YES.

6 Q. AND PRIOR TO THAT SECOND COUNCIL VOTE, THERE WAS A
7 SECOND MEMO FROM THE MAYOR'S OFFICE, CORRECT?

8 A. I DO NOT RECALL IT BUT -- NO, I DON'T RECALL IT.

9 Q. OKAY. DO YOU RECALL THAT THERE WAS A SECOND
10 COUNCIL VOTE IN DECEMBER 2000, CORRECT?

11 A. APPROXIMATELY.

12 Q. DO YOU RECALL WHAT ACTIONS THE CITY COUNCIL TOOK ON
13 NORCAL'S PROPOSAL AT THE DECEMBER CITY COUNCIL MEETING?

14 A. I DON'T RECALL THE EXACT ACTIONS, NO.

15 Q. OKAY. LET ME SEE IF I CAN ASSIST YOU.

16 LET ME SHOW YOU EXHIBIT 22, WHICH IS A CERTIFIED
17 COPY OF THE MINUTES OF THE CITY COUNCIL FOR THURSDAY,
18 DECEMBER 12, 2000.

19 A. THANK YOU.

20 Q. WHY DON'T YOU TAKE A MOMENT AND LOOK AT THOSE
21 MINUTES AND SEE IF IT REFRESHES YOUR MEMORY.

22 A. DO YOU KNOW THE ITEM NUMBER FROM THE DAY?

23 Q. IT'S USUALLY AROUND SEVEN OR NINE, SOMEWHERE AROUND
24 THERE. WOULD YOU LIKE ME TO TRY TO LOCATE IT FOR YOU?

25 A. SORRY. I'M STILL LOOKING.

26 Q. WAS I RIGHT ABOUT THE DATE, DECEMBER 12?

27 A. YES, YOU WERE CORRECT.

28 Q. OKAY. YOU WERE PRESENT, RIGHT?

SUE HERFURTH, CSR #9645

1228

1 A. YES.

2 Q. AND A VOTE WAS TAKEN ON THE NORCAL PROPOSAL,
3 CORRECT?

4 A. CORRECT.

5 Q. AND WHAT ACTION DID THE CITY COUNCIL TAKE ON
6 NORCAL'S PROPOSAL AT THE DECEMBER 12, 2000 COUNCIL MEETING?

7 A. WE ACCEPTED THE REPORTS RELATED TO POTENTIAL
8 SERVICE ENHANCEMENT REVENUE OR COSTS FOR RECYCLE PLUS
9 PROGRAM, THE ACCEPTANCE OF THE REPORT ON LABOR PEACE ISSUES
10 RELATE TO THE RECYCLE PLUS PROGRAM, AND ACCEPTANCE OF THE
11 REPORT FROM THE CITY AUDITOR ON THE REVIEW OF THE AUDIT, AND
12 AUTHORIZATION FOR THE CITY MANAGER TO NEGOTIATE --

13 Q. SO BASICALLY THE PROPOSAL WAS ACCEPTED AND STAFF

14 WAS DIRECTED TO NEGOTIATE THE CONTRACT WITH NORCAL?

15 A. CORRECT.

16 Q. AT THIS MEETING AT THIS COUNCIL MEETING ON DECEMBER
17 12, DID THE MAYOR OR NORCAL SAY ANYTHING ABOUT ANY PROMISES
18 OR REPRESENTATIONS THEY MADE TO NORCAL OR CWS?

19 A. NO.

20 Q. DID THE MAYOR OR NORCAL SAY ANYTHING AT THE COUNCIL
21 VOTE ABOUT THE MAYOR DIRECTING NORCAL OR CWS TO USE THE
22 TEAMSTERS?

23 A. NO.

24 Q. DID THE MAYOR OR NORCAL SAY ANTHING AT THIS COUNCIL
25 VOTE ON DECEMBER 12 ABOUT THE CITY NEEDING TO REIMBURSE
26 NORCAL OR CWS FOR ADDITIONAL LABOR COSTS NOT REFLECTED IN
27 THE NORCAL PROPOSAL?

28 A. NO.

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1229

1 Q. IS THAT INFORMATION THAT YOU WOULD HAVE WANTED TO
2 HAVE BEFORE CASTING YOUR VOTE ON DECEMBER 12 IN FAVOR OF THE
3 NORCAL PROPOSAL?

4 A. YES.

5 Q. AND FOR THE SAME REASONS YOU EXPRESSED BEFORE?

6 A. YES. THESE WERE ISSUES I WAS CONCERNED ABOUT, I
7 WAS VERY WORRIED, AS YOU HEARD ON THE TAPE EARLIER, ABOUT
8 HOW THE WORKERS WERE GOING TO BE TREATED IRRESPECTIVE OF THE
9 UNION REPRESENTING THEM OR IF THEY WOULD BE AT ALL.

10 Q. BEFORE THIS SECOND VOTE ON DECEMBER 12, 2000, DID
11 YOU SPEAK WITH THE MAYOR ABOUT THESE ISSUES?

- 12 A. NOT THAT I RECALL.
- 13 Q. OKAY.
- 14 A. MAY I ASK A CLARIFYING QUESTION?
- 15 Q. YES.
- 16 A. WHEN YOU SAY THESE ISSUES, ARE YOU REFERRING TO --
- 17 Q. THE SELECTION OF NORCAL'S PROPOSAL.
- 18 A. YOU KNOW WHAT, I DON'T REMEMBER THE ANSWER TO THAT
- 19 QUESTION. I DON'T RECALL IF I DID OR DIDN'T.
- 20 Q. MAYBE I CAN ASK IT THIS WAY: DO YOU RECALL THE
- 21 MAYOR SAYING ANYTHING TO YOU PRIOR TO THE DECEMBER 12
- 22 COUNCIL VOTE ABOUT ANY PROMISES OR REPRESENTATIONS THAT HE
- 23 MAY HAVE MADE TO NORCAL OR CWS?
- 24 A. NO.
- 25 Q. DO YOU RECALL THE MAYOR SAYING ANYTHING TO YOU
- 26 PRIOR TO DECEMBER 12 VOTE ABOUT THE MAYOR DIRECTING NORCAL
- 27 OR CWS TO USE THE TEAMSTERS?
- 28 A. NO.

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1230

- 1 Q. DO YOU REMEMBER THE MAYOR SAYING ANYTHING TO YOU
- 2 PRIOR TO THE DECEMBER 12 VOTE ABOUT THE CITY NEEDING TO
- 3 REIMBURSE NORCAL OR CWS FOR ADDITIONAL LABOR COSTS?
- 4 A. NO.
- 5 Q. DID YOU SPEAK WITH NORCAL BETWEEN THE FIRST AND
- 6 SECOND VOTE, AND BY THE FIRST VOTE I MEAN OCTOBER 10, 2000,
- 7 AND THE SECOND VOTE -- DECEMBER 12, 2000?
- 8 A. I DON'T KNOW. I DON'T RECALL IF I DID OR NOT.
- 9 Q. DO YOU RECALL NORCAL SAYING ANYTHING TO YOU PRIOR

10 TO THE DECEMBER 12 COUNCIL VOTE ABOUT ANY PROMISES OR
11 REPRESENTATIONS THAT MAY HAVE BEEN MADE TO THEM?

12 A. NO.

13 Q. OR DID THEY SAY ANYTHING ABOUT BEING DIRECTED TO
14 USE THE TEAMSTERS?

15 A. NO.

16 Q. DID THEY SAY ANYTHING ABOUT THE CITY NEEDING TO
17 REIMBURSE NORCAL OR CWS FOR ADDITIONAL LABOR COSTS?

18 A. NO.

19 Q. THEN DO YOU RECALL THAT --

20 A. MAY I QUALIFY THAT? I DO WANT TO SHARE A
21 CONVERSATION, BUT I DON'T KNOW WHEN THIS OCCURRED. MY
22 RECOLLECTION IS THAT IT WOULD HAVE BEEN SOMEWHERE EARLY IN
23 THIS DISCUSSION. THAT IS THAT I WAS VERY CONCERNED ABOUT,
24 AND REMAINED CONCERNED THROUGHOUT THIS PROCESS, ABOUT THE
25 RATE OF PAY THAT THE PEOPLE AT THE MRF WERE MAKING, AND
26 ANYTIME I'M SURE I WOULD HAVE RAISED THAT WITH SOMEONE THEY
27 WOULD HAVE SAID, AND I'M SURE THIS HAPPENED IN A PUBLIC
28 MEETING, IT'S GOING TO INCREASE THE COST, SO I KNOW THAT

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1231

1 THAT'S SOMETHING THAT WOULD INCREASE THE COST OVERALL OF THE
2 PROPOSALS THAT CAME BEFORE US. SO I KNOW THAT IF I WAS NOT
3 SURE THAT PEOPLE WERE GOING TO BE PAID FAIRLY, I WOULD HAVE
4 CONTINUED TO ASK PEOPLE ABOUT THAT, WHETHER THAT WAS THE
5 MAYOR OR THE COMPANIES INVOLVED.

6 Q. LET ME SEE IF I UNDERSTAND WHAT YOU'RE TELLING US,
7 AND MAYBE YOU COULD TRY TO EXPLAIN IT A LITTLE MORE.

8 A. WHAT I MEAN IS THAT WHEN THE AUDIT CAME OUT, THE
9 AUDIT WAS FOCUSED UPON OTHER THINGS I WAS CONCERNED ABOUT,
10 LIKE THE SPLIT TRUCK. AND I DIDN'T UNDERSTAND ENTIRELY HOW
11 THAT WAS GOING TO WORK, AND IT WAS NEW.

12 AT THAT MEETING I DID SAY I WAS CONCERNED ABOUT
13 WANTING TO KNOW WHAT THE LABOR COSTS ARE, BECAUSE I WANTED
14 TO MAKE SURE WE WERE PAYING PEOPLE FAIRLY.

15 Q. I THINK WHAT YOU SAID AT THE MEETING WAS YOU WANTED
16 TO MAKE SURE THAT SAVINGS WERE NOT AT THE EXPENSE OF WAGES
17 AND BENEFITS FOR THE WORKERS.

18 A. RIGHT. AND MY ONLY COMMENT IS THOSE THINGS WERE
19 CONSISTENT FOR ME FROM WHEN I STARTED ON THIS VENTURE AS A
20 NEW COUNCILMEMBER IN 1999, EVEN PRIOR TO THE MEETING THE
21 10TH, WAS WORKER RETENTION, LABOR PEACE. I EVEN WANTED
22 LOCAL PREFERENCE. I REMAINED VERY CONCERNED ABOUT THOSE
23 ISSUES. SO I DIDN'T WANT TO DISMISS OUT OF HAND, SO I COULD
24 HAVE SAID TO SOMEONE, ARE WE SURE WE ARE TAKING CARE OF THE
25 PEOPLE BEING PAID DECENTLY. AND I WANT YOU TO UNDERSTAND
26 THAT I UNDERSTOOD THAT WOULD MEAN THERE WOULD BE AN INCREASE
27 IN COST AT SOME POINT, THAT'S THE POINT. IF THERE WAS A
28 CHANGE.

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1232

1 Q. WHO WOULD BE GETTING AN INCREASE IN COST?

2 A. THAT THERE COULD BE AN INCREASE IN COST, EITHER FOR
3 THE COMPANY OR FOR THE CITY, DEPENDING ON IF THERE WAS ANY
4 DRAMATIC CHANGE PRIOR TO US TAKING THE VOTE.

5 Q. RIGHT. BUT I GUESS WHAT WE'RE TRYING TO LOOK AT

6 HERE, TO BE A LITTLE MORE PRECISE, IS THE QUESTION OF WHO
7 SHOULD BEAR THESE EXTRA LABOR COSTS AND WHETHER THAT SHOULD,
8 INFORMATION SHOULD HAVE BEEN DISCLOSED BEFORE THE CONTRACT
9 WAS SIGNED OR, AS IT APPEARS IN THIS CASE, AFTER THE
10 CONTRACT WAS SIGNED. DO YOU UNDERSTAND THAT?

11 A. I UNDERSTAND THAT. I JUST WANTED TO TELL YOU WHAT
12 I KNEW, SO I WAS HOPING IF ANY INFORMATION I HAD WOULD BE
13 HELPFUL TO YOU.

14 Q. JUST TO CLARIFY, YOU UNDERSTAND WE'RE LOOKING AT A
15 PROCESS, THERE'S AN INITIAL COUNCIL VOTE ON OCTOBER 10,
16 2000, CORRECT?

17 A. CORRECT.

18 Q. THERE'S A REFERRAL TO THE CITY AUDITOR TO LOOK AT
19 CERTAIN ISSUES, AMONG OTHER THINGS?

20 A. RIGHT, THAT I REQUESTED.

21 Q. RIGHT. APPARENTLY, OTHERS WANTED THAT, TOO, AND
22 THEY VOTED IN FAVOR OF IT?

23 A. RIGHT.

24 Q. THERE'S A SECOND COUNCIL VOTE ON DECEMBER 12, 2000,
25 CORRECT?

26 A. CORRECT.

27 Q. STAFF'S DIRECTED TO NEGOTIATE THE WORDING OF THE
28 AGREEMENT, CORRECT?

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1233

1 A. CORRECT.

2 Q. AND AN AGREEMENT IS SIGNED ON, I THINK MARCH 27,
3 2001, OR THEREABOUTS?

4 A. CORRECT.

5 Q. TO YOUR KNOWLEDGE, THROUGHOUT THAT ENTIRE PROCESS,
6 DID ANYONE BRING TO YOUR ATTENTION OR DISCLOSE TO YOU THAT
7 THE MAYOR HAD MADE CERTAIN ASSURANCES OR PROMISES TO NORCAL
8 ABOUT NORCAL GETTING ADDITIONAL CITY COMPENSATION?

9 A. NO.

10 Q. LET ME FINISH. ADDITIONAL CITY COMPENSATION FOR
11 ADDITIONAL LABOR COSTS NECESSITATED BY SWITCHING FROM
12 LONGSHOREMEN TO TEAMSTERS?

13 A. NO.

14 Q. AND IS THAT INFORMATION YOU WOULD HAVE WANTED TO
15 KNOW ABOUT BEFORE VOTING ON WHETHER OR NOT TO ACCEPT THE
16 CONTRACT?

17 A. YES.

18 Q. SO YOU UNDERSTOOD, I TAKE IT, WHEN THE CONTRACT
19 CAME BACK FOR PROFESSIONAL APPROVAL UPON MARCH 27, 2001,
20 BEFORE THE COUNCIL, YOU UNDERSTOOD THAT ONE OF THE
21 PROVISIONS OF THE CONTRACT WOULD BE INCREASED LABOR COSTS
22 WOULD BE BORNE BY THE CONTRACTORS, NOT BY THE CITY, OTHER
23 THAN CERTAIN COST OF LIVING ADJUSTMENTS, RIGHT?

24 A. YES.

25 Q. SO LET'S MOVE FORWARD TO MAY 27, 2003. DO YOU
26 RECALL THAT THERE WAS A CITY COUNCIL VOTE ON THAT DATE ABOUT
27 RAISING THE RECYCLE PLUS RATE HIKES?

28 A. YES. GENERALLY AROUND THAT TIME.

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1234

1 Q. THERE WAS A NINE PERCENT RATE INCREASE, I BELIEVE?
Page 16

2 A. I DON'T RECALL THE EXACT AMOUNT ON THAT DATE.

3 Q. OKAY. NOW, THERE HAD BEEN THAT RATE HIKE JUST
4 PRIOR TO DECEMBER, HAD THERE NOT?

5 A. YES.

6 Q. NORMALLY, THOSE RATE HIKES ARE ONCE A YEAR AFFAIRS,
7 USUALLY AT THE END OF THE YEAR?

8 A. I DON'T KNOW WHAT THE NORMAL PRACTICE IS.

9 Q. WITH RESPECT TO THE MAY 2003 RATE HIKE, DO YOU
10 RECALL WHAT THE REASON FOR THIS RATE HIKE WAS?

11 A. I KNOW THAT AS PART OF OUR BUDGET DISCUSSIONS, AND
12 I APOLOGIZE BECAUSE THIS COULD HAVE BEEN THE RATE HIKE
13 YOU'RE REFERRING TO IN DECEMBER VERSUS MAY, BUT I KNOW THAT
14 OVERALL WE HAD A GOAL AND PLAN FOR THE CITY TO MAKE SURE
15 THAT THE SINGLE-FAMILY COLLECTIONS WERE AT FULL COST
16 RECOVERY, AND AT THAT TIME WERE THEY WERE NOT, THEY
17 SOMETHING LIKE 90 PERCENT OR 91 PERCENT, AND I REMEMBER THAT
18 BEING THE DISCUSSION, EITHER IN A BUDGET SESSION OR AT ONE
19 OF THE MEETINGS WHERE WE TALKED ABOUT THE RATE HIKE.

20 Q. LET ME SEE IF I CAN GET IT ANOTHER WAY. YOU VOTED
21 IN FAVOR OF THE NINE PERCENT RATE HIKE IN MAY OF '03?

22 A. YES.

23 Q. OKAY. ARE YOU TELLING US THAT YOUR UNDERSTANDING
24 OF THE PURPOSE OF THE RATE HIKE WAS TO INCREASE COST
25 RECOVERY FOR THAT SERVICE?

26 A. EITHER AT THE MAY MEETING OR THE DECEMBER MEETING
27 WHEN WE DID THE INITIAL RATE HIKES, YES.

28 Q. JUST TO REMIND THE JURORS, THE WAY WE UNDERSTAND

1 THIS WORKS, THIS IS ONE OF THOSE SERVICES A PROPERTY OWNER
2 COULD BE ASSESSED TO PAY FOR, CORRECT?

3 A. CORRECT.

4 Q. TO THE EXTENT THERE IS A SHORTFALL IN REVENUE FROM
5 THE ASSESSMENT, THE SHORTFALL HAS TO BE MADE UP FROM THE
6 CITY'S GENERAL FUND?

7 A. THAT'S CORRECT, OR THERE'S EVEN ANOTHER ENTERPRISE
8 FUND, I GUESS.

9 Q. WHEN YOU VOTED FOR THE MAY 27, 2003 RATE HIKE, DID
10 YOU HAVE ANY UNDERSTANDING ABOUT THAT RATE HIKE HAVING
11 ANYTHING TO DO WITH BUILDING UP A RESERVE TO COMPENSATE
12 NORCAL FOR CWS'S INCREASED LABOR COSTS?

13 A. NO.

14 Q. DID THE MAYOR OR NORCAL SAY ANYTHING TO YOU AT OR
15 BEFORE THIS COUNCIL VOTE ABOUT ANY PROMISES OR
16 REPRESENTATIONS THAT MAY HAVE BEEN MADE TO NORCAL OR CWS?

17 A. NO.

18 Q. DID THE MAYOR OR NORCAL SAY ANYTHING AT OR BEFORE
19 THIS COUNCIL VOTE ABOUT THE MAYOR DIRECTING CWS OR NORCAL
20 TO USE THE TEAMSTERS?

21 A. NO.

22 Q. DID THE MAYOR OR NORCAL SAY ANYTHING AT THIS
23 COUNCIL VOTE OR BEFORE ABOUT THE CITY NEEDING TO REIMBURSE
24 NORCAL OR CWS FOR ADDITIONAL LABOR COSTS NOT REFLECTED IN
25 THE NORCAL PROPOSAL?

26 A. NO.

27 Q. SO, AS FAR AS YOU KNEW, AT THE TIME YOU VOTED ON
28 THE MAY 2003 NINE PERCENT RATE HIKE, THAT WAS TO SIMPLY

1 INCREASE COST RECOVERY AND REDUCE DEPENDENCE ON THE GENERAL
2 FUND?

3 A. THAT'S CORRECT.

4 Q. SO NOW LET'S JUMP AHEAD TO THE YEAR 2004. DID
5 MAYOR GONZALES RECOMMEND AMENDING THE NORCAL AGREEMENT IN A
6 MEMO TO THE CITY COUNCIL DATED SEPTEMBER 16, 2004?

7 A. I DON'T RECALL THE DATE.

8 Q. OKAY. LET ME SHOW YOU.

9 A. THAT WOULD BE GREAT. THANK YOU.

10 Q. WHY DON'T YOU LOOK AT EXHIBIT 42, AND I'M GOING TO
11 MARK AN EXHIBIT YOU -- OR MAYBE NOT. TAKE A LOOK AT THAT
12 EXHIBIT FOR US FOR A MOMENT. MAY I HAVE MARKED AS EXHIBIT
13 99 A CERTIFIED COPY OF A SEPTEMBER 16, 2004 MEMO TO THE CITY
14 COUNCIL FROM MAYOR GONZALES, VICE MAYOR DANDO AND
15 COUNCILMEMBER CHAVEZ?

16 THE FOREPERSON: SO MARKED.

17 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
18 JURY EXHIBIT 99.)

19 BY MR. FINKELSTEIN:

20 Q. SO HAVING LOOKED AT EXHIBIT 42 AND NOW EXHIBIT 99,
21 THE CERTIFIED COPY OF EXHIBIT 42, DO YOU NOW RECALL THAT
22 MAYOR GONZALES RECOMMENDED AMENDING THE NORCAL AGREEMENT IN
23 A MEMO TO THE CITY COUNCIL DATED SEPTEMBER 16, 2004?

24 A. YES.

25 Q. LET ME TAKE BACK ONE OF THOSE COPIES OF THE MEMO.
26 LET'S ALL TAKE A LOOK AT IT. DID MAYOR GONZALES SIGN THIS
27 MEMO?

28 A. I DIDN'T WATCH HIM SIGN IT.

- 1 Q. DO YOU RECOGNIZE HIS SIGNATURE?
- 2 A. THAT LOOKS LIKE HIS SIGNATURE, YEAH.
- 3 Q. AND DO YOU RECOGNIZE YOUR OWN SIGNATURE ON THE
- 4 MEMO?
- 5 A. YES.
- 6 Q. IS THAT YOUR SIGNATURE?
- 7 A. YES.
- 8 Q. DO YOU RECOGNIZE COUNCILMEMBER DANDO'S SIGNATURE?
- 9 A. IT LOOKS LIKE HERS, BUT I DIDN'T SEE HER SIGN IT.
- 10 Q. DO YOU KNOW AT WHOSE REQUEST THE MEMO WAS PREPARED?
- 11 A. I BELIEVE, I CAN ONLY ASSUME IT'S THE MAYOR'S
- 12 OFFICE.
- 13 Q. I DON'T WANT YOU TO MAKE ASSUMPTIONS.
- 14 A. THEN NO.
- 15 Q. DO YOU KNOW WHO ACTUALLY PREPARED THE MEMO?
- 16 A. I DO NOT.
- 17 Q. DID THE MAYOR'S MEMO INCLUDE A RECOMMENDATION THAT
- 18 THE CITY PAY NORCAL FOR INCREASED LABOR COSTS DUE TO CWS
- 19 SWITCHING FROM ILWU WORKERS TO TEAMSTERS?
- 20 A. YES.
- 21 Q. WAS THIS MEMO SUBMITTED TO THE CITY COUNCIL?
- 22 A. YES.
- 23 Q. DID IT BECOME PART OF THE OFFICIAL RECORD OF THE
- 24 SEPTEMBER 16, 2004 CITY COUNCIL MEETING PROCEEDINGS?
- 25 A. I'M NOT SURE THIS WAS ON THE 16TH. LOOKS LIKE IT
- 26 WAS ON THE 21ST.

27 Q. I'M SORRY, THE 21ST. SO OTHER THAN THE DATE WAS I
28 CORRECT?

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1 A. YES.

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

5 A. NO.

6 Q. DID YOU SUPPORT THE RECOMMENDATION IN THIS MEMO?

7 A. YES.

8 Q. WHY?

9 A. FOR --

10 Q. BEFORE YOU ANSWER THAT, JUST TO BE CLEAR, JUST TO
11 ORIENT EVERYONE, THE REASON I ASKED WHY IS, YOU HAVE JUST
12 GONE THROUGH A PROCESS OF, YEARS EARLIER, TO PICK NORCAL IN
13 PART BECAUSE IT WAS THE LOWEST BIDDER, CORRECT?

14 A. CORRECT.

15 Q. THE CITY ENTERED INTO AN AGREEMENT WITH NORCAL THAT
16 SAID ANY INCREASED LABOR COST WAS NORCAL'S PROBLEM, NOT THE
17 CITY'S?

18 A. THAT'S CORRECT.

19 Q. HERE WE'RE IN 2004 AND YOU'RE SIGNING ON TO A MEMO
20 THAT RECOMMENDS THE CITY OF SAN JOSE, AND ULTIMATELY THE
21 RATEPAYERS OF SAN JOSE, SHELL OUT AN ADDITIONAL 11 MILLION
22 DOLLARS THAT DOESN'T SEEM TO BE REQUIRED. I MEAN, IT'S JUST
23 AN AGREEMENT. CAN YOU TELL US WHY YOU THOUGHT THAT WAS A
24 GOOD IDEA?

25 A. SURE. FIRST OF ALL, WHEN WE TOOK THIS VOTE THE
26 FIRST TIME TO DO A REQUEST FOR PROPOSALS FOR THIS PROCESS, I
27 WAS NERVOUS ABOUT THAT AS A NEW COUNCILMEMBER BECAUSE I HAD
28 A FEAR OF GARBAGE PILING UP ON THE STREETS AND THE

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1 TRANSITION BEING A CHALLENGE.

2 I FELT AS WE MOVED FORWARD THAT WE WERE GETTING
3 GOOD CUSTOMER SERVICE, I WAS GETTING FEWER COMPLAINTS ABOUT
4 STREET SWEEPING IN PARTICULAR, BUT NOT THAT THAT WAS JUST
5 NORCAL, BUT THAT WE WERE GETTING GOOD CUSTOMER SERVICE.

6 THE OTHER IS FROM A POLICY PERSPECTIVE IT WOULD
7 NOT HAVE BEEN INCONSISTENT IN MY MIND TO PAY FOR THE
8 ADDITIONAL COSTS. AS A PROCURER OF SERVICES, AS A CITY, WE
9 PAY FOR A LIVING WAGE, AND THE CONTRACTOR DOESN'T BEAR THAT
10 RESPONSIBILITY. THE CONTRACT IS ADJUSTED TO INCORPORATE
11 WHAT THE WAGES ARE.

12 SAME WITH PREVAILING WAGE, IF WE DO A REQUEST FOR
13 QUALIFICATIONS, FOR EXAMPLE, ON A PIECE OF PROPERTY, AND
14 IT'S FROM THE REDEVELOPMENT AGENCY, THE VALUE OF THAT LAND
15 IS RELATED TO WHETHER OR NOT WHOEVER DEVELOPS IT WOULD HAVE
16 TO USE PREVAILING WAGES FOR CONSTRUCTION, FOR EXAMPLE.

17 SO FOR ME, BEING THAT I CONSIDERED PEOPLE BEING
18 PAID DECENTLY IMPORTANT AND THAT WE HAVE DONE THIS AS A
19 POLICY, I HAD TAKEN LEADERSHIP ON THOSE ISSUES, FROM A
20 POLICY PERSPECTIVE, THIS WAS NOT INCONSISTENT FOR ME, FROM
21 MY PERSPECTIVE.

22 Q. OKAY. SO THAT'S KIND OF A LONG ANSWER. LET ME ASK

23 YOU SOME FOLLOW-UP QUESTIONS ABOUT IT.

24 I SN'T IT THE CASE THAT THE CITY'S LIVING WAGE
25 POLICY DID NOT APPLY TO THE MRF WORKERS AT THE MRF FACILITY?

26 A. THAT'S CORRECT.

27 Q. IS IT NOT ALSO THE CASE THAT THE CITY'S PREVAILING
28 WAGE POLICY DID NOT APPLY TO THE MRF WORKERS AT THE MRF

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1 FACILITY?

2 A. THAT'S CORRECT.

3 Q. SO WHAT CITY POLICY IS BEING FURTHERED IN YOUR MIND
4 BY THE CITY BEARING THE BURDEN OF PAYING THE MRF WORKERS AN
5 ADDITIONAL 11 MILLION DOLLARS?

6 A. WE LIVE IN ONE OF THE MOST EXPENSIVE PLACES TO LIVE
7 ON EARTH, AND FROM MY PERSPECTIVE, MAKING SURE PEOPLE ARE
8 PAID A DECENT WAGE, ESPECIALLY WHEN THE CITY IS IN THE
9 POSITION OF PROCURER OF SERVICES, IT IS VERY IMPORTANT.
10 NORCAL COULD HAVE BEARED THE BRUNT OF THOSE COSTS, BUT GIVEN
11 THAT I WAS CONCERNED ABOUT THIS ALL ALONG, IT DID NOT FEEL
12 INCONSISTENT TO ME, BOTH FROM MY VALUES AND FROM A POLICY
13 PERSPECTIVE.

14 Q. SO THE POLICY IN FACT BEING FURTHERED WAS YOUR
15 POLICY, NOT NECESSARILY THE CITY'S POLICY?

16 A. NO, IT WAS MY, IN MY OPINION BEING CONSISTENT WITH
17 VOTES I HAD ALREADY TAKEN. IT DID NOT FEEL LIKE AN
18 INCONSISTENT VOTE.

19 Q. IF THE COMPENSATION FOR MRF WORKERS AT THE MRF
20 FACILITY WAS NOT COVERED BY THE CITY'S PREVAILING WAGE

21 POLICY OR LIVING WAGE POLICY, WHAT CITY POLICY DICTATED A
22 LEVEL OF COMPENSATION FOR MRF WORKERS?

23 A. IT WOULD HAVE BEEN, COULD HAVE BEEN WORKER
24 RETENTION OR LABOR PEACE DEPENDING ON HOW NORCAL HAD DECIDED
25 TO HANDLE THIS.

26 Q. WELL, WHEN THE CITY ENTERED INTO THE AGREEMENT BACK
27 IN MARCH OF '01, THAT INCLUDED A CLAUSE THAT SAID ANY
28 INCREASED COMPENSATION OR WORKERS WOULD BE THE CONTRACTOR'S

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1 RESPONSIBILITY. WASN'T THAT A CITY POLICY THAT WAS BEING
2 FURTHERED BY HAVING THAT CLAUSE IN THERE?

3 A. YES.

4 Q. SO WOULDN'T NOW AGREEING TO PAY NORCAL AN
5 ADDITIONAL 11 MILLION DOLLARS, WOULDN'T THAT BE INCONSISTENT
6 WITH THE CITY'S POLICY AS EXPRESSED IN ITS AGREEMENT WITH
7 NORCAL BACK IN 2001?

8 A. FROM THAT PARTICULAR AGREEMENT, YES, BUT THE COSTS
9 WERE STILL SIGNIFICANTLY LOWER, AT LEAST THAT'S WHAT I HAD
10 BEEN TOLD BY STAFF, AND WE WERE HAVING GOOD CUSTOMER
11 SERVICE, AND I CARE ABOUT PEOPLE BEING PAID FAIRLY.

12 Q. WAS IT YOUR IMPRESSION WHEN YOU WERE VOTING ON THIS
13 AMENDMENT THAT THE MRF WORKERS WERE NOT GETTING PAID THE
14 INCREASED WAGES AT THE TIME YOU VOTED ON THIS?

15 A. NO, I UNDERSTOOD WE WOULD BE REIMBURSING, I BELIEVE
16 I UNDERSTOOD WE WOULD HAVE BEEN REIMBURSING EITHER CWS OR
17 NORCAL. I DON'T REMEMBER AT THE TIME.

18 Q. YOU UNDERSTOOD AT THE TIME OF THE VOTE THAT THIS

19 MONEY WAS NOT GOING TO THE WORKERS; THEY WERE ALREADY
20 RECEIVING MONEY, RIGHT?

21 A. IN MY OPINION, IT WAS GOING TOWARD PAYING FOR THE
22 WORKERS' SALARIES. YES, IT WAS GOING INTO THE COMPANY,
23 BUT --

24 Q. BUT DID YOU UNDERSTAND THAT FROM DAY ONE OF
25 OPERATIONS, JULY 1, '02, THE WORKERS WERE GETTING NO LESS
26 THAN THE EXISTING WAGES AND BENEFITS?

27 A. DID I UNDERSTAND THAT WHEN I TOOK THIS VOTE?

28 Q. YES.

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1 A. THAT'S A GOOD QUESTION. I DON'T RECALL IF I KNEW
2 THAT'S WHEN THE CONTRACT STARTED AND THAT WE WERE
3 REIMBURSING THE COMPANY BACK TO THAT DATE WHEN I TOOK THIS
4 VOTE.

5 Q. WELL, DID YOU UNDERSTAND THAT WHEN YOU TOOK THIS
6 VOTE THAT MORE THAN A YEAR EARLIER, IN '03, CWS ENTERED INTO
7 A COLLECTIVE BARGAINING AGREEMENT WITH THE TEAMSTERS?

8 A. I DON'T RECALL IF I KNEW THAT.

9 Q. I MEAN, ISN'T IT THE CASE, AND DID YOU NOT
10 UNDERSTAND THAT THIS VOTE WAS NOT ABOUT THE WORKERS GETTING
11 MONEY, BECAUSE THEY HAD ALREADY BEEN GETTING MONEY; IT WAS
12 ABOUT WHETHER OR NOT THE CITY WAS GOING TO REIMBURSE NORCAL
13 FOR THIS EXTRA EXPENSE; ISN'T THAT WHAT THE VOTE WAS REALLY
14 ABOUT?

15 A. FOR ME, THE VOTE WAS ABOUT WHETHER OR NOT WE WERE
16 GOING TO PAY PEOPLE A DECENT WAGE. AND EVEN IF WE WERE

17 REIMBURSING A COMPANY FOR THAT, IT DID NOT SEEM INCONSISTENT
18 WITH ME, GIVEN WHAT WE DO WHEN WE, RELATED TO THE PREVAILING
19 WAGE OR THE LIVING WAGE AND WHERE IT APPLIES, AND THIS
20 CONTRACT HAD WORKER RETENTION AND LABOR PEACE. SO NO, FOR
21 ME, IT DID NOT SEEM INCONSISTENT.

22 Q. IF THE WORKERS WERE ALREADY GETTING PAID WHATEVER
23 WAGES THEY WERE ENTITLED TO UNDER THE COLLECTIVE BARGAINING
24 AGREEMENT WITH THE TEAMSTERS, HOW WOULD THIS VOTE CHANGE
25 WHETHER OR NOT THEY GOT PAID?

26 A. IT WOULD HAVE BEEN DEPENDED ON WHETHER OR NOT
27 NORCAL LIVED UP TO THEIR AGREEMENT PERHAPS, OR WHETHER OR
28 NOT CWS LIVED UP TO THEIR AGREEMENT. IT COULD HAVE DEPENDED

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1 ON WHETHER OR NOT THEY DECIDED THAT THEY WANTED TO DO WORK
2 STOPPAGES -- FROM MY PERSPECTIVE, THE OTHER ELEMENTS OF THE
3 AGREEMENT RELATED TO WORKER RETENTION AND LABOR PEACE WERE
4 IMPORTANT.

5 Q. I UNDERSTAND, BUT THERE WAS A LENGTHY PROCESS THAT
6 WENT THROUGH TO DEVELOP THE RFP, RIGHT?

7 A. CORRECT.

8 Q. OKAY. THE CITY COULD HAVE PUT SOMETHING IN THERE
9 AS A POLICY DECISION BY THE COUNCIL AS A WHOLE SPEAKING TO
10 WHETHER OR NOT NEW CONTRACTORS HAD TO AGREE TO PAY NO LESS
11 THAN THE EXISTING CONTRACTOR, RIGHT?

12 A. THAT'S CORRECT.

13 Q. THE CITY AS A WHOLE CHOSE NOT TO INCLUDE THAT IN
14 THE RFP, RIGHT?

- 15 A. THAT' S CORRECT.
- 16 Q. UH -- WE' VE ALREADY TALKED ABOUT THE FACT THAT
17 PREVAI LING WAGE AND LIVING WAGE DIDN' T APPLY TO MRF WORKERS.
- 18 A. THAT' S CORRECT.
- 19 Q. AND YOU UNDERSTOOD THAT FOR SOME PERIOD OF TIME
20 BEFORE 2004, THE MRF WORKERS WERE GETTING PAID THE HIGHER
21 WAGES AND BENEFITS?
- 22 A. THAT' S CORRECT.
- 23 Q. IF THEY WERE ALREADY GETTING PAID THE HIGHER WAGES
24 AND BENEFITS, HOW WOULD PUTTING MONEY INTO NORCAL OR CWS'
25 POCKETS HAVE ANY IMPACT ON THE WORKERS AND THEIR WAGES?
- 26 A. I THINK I' VE ANSWERED THAT QUESTION A COUPLE OF
27 DIFFERENT TIMES.
- 28 Q. OKAY. I' M TRYING TO UNDERSTAND THE ANSWER.

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- 1 A. MY ANSWER IS THAT IT DID NOT SEEM INCONSISTENT WITH
2 OTHER ACTIONS THAT THE COUNCIL HAD TAKEN IN THE PAST AND
3 THAT I HAD TAKEN LEADERSHIP ON RELATED TO THE PREVAI LING
4 WAGE AND LIVING WAGES.
- 5 IN GENERAL, THE CONTRACTOR DOES NOT BEAR THE
6 RESPONSIBI LITY FOR THOSE WAGES. IN THIS INSTANCE, AND I
7 UNDERSTAND WE' RE HAVING A DISAGREEMENT, BUT IN THIS INSTANCE
8 IT DID NOT SEEM INCONSISTENT TO ME TO MAKE SURE THE WORKERS
9 WERE PAID. AND WHILE I UNDERSTOOD THAT NORCAL COULD BE THE
10 ONE THAT WAS ON THE HOOK, OR CWS, I WOULD HAVE PAID THE
11 HIGHER WAGES HAD I KNOWN THAT -- THE REPRESENTATI ON YOU' RE
12 MAKING IN TERMS OF AT WHAT TIME WHO KNEW WHAT, WHEN.

13 IF SOMEONE HAD COME TO ME AND SAID, THE CONTRACT
14 NEEDS TO HAVE MORE MONEY, THEN I WOULD HAVE SUPPORTED IT
15 THEN.

16 Q. THOSE OTHER OCCASIONS YOU MADE REFERENCE TO, WERE
17 THOSE OCCASIONS WHERE THE CONTRACTOR DISCLOSED THE EXTRA
18 COST BEFORE THE CONTRACT WAS SIGNED OR AFTER THE CONTRACT
19 WAS SIGNED?

20 A. IF I UNDERSTAND YOUR QUESTION, I WOULD HAVE WANTED
21 TO KNOW BEFORE WE SIGNED A CONTRACT WITH THEM.

22 Q. MY QUESTION IS A BIT DIFFERENT. YOU SAID THAT YOU
23 FELT THAT THIS WAS CONSISTENT WITH PRIOR ACTIONS THE COUNCIL
24 HAD TAKEN WITH REGARD TO OTHER CONTRACTORS. AND MY QUESTION
25 GOES TO THOSE OTHER CASES YOU MADE REFERENCE TO OR HAD IN
26 MIND.

27 ON THOSE OTHER OCCASIONS WHEN THE COUNCIL
28 SUPPORTED PAYING MORE MONEY TO THE CONTRACTOR FOR INCREASED

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1 LABOR COSTS, WERE THOSE SITUATIONS WHERE THE CONTRACTOR
2 ASKED FOR THE MONEY BEFORE THE CONTRACT WAS SIGNED OR AFTER
3 THE CONTRACT WAS SIGNED?

4 A. IT DEPENDS, BECAUSE ON THE REQUEST FOR PROPOSALS WE
5 HAVE EXCLUSIVE NEGOTIATING AGREEMENTS, AND SOMETIMES THOSE
6 AGREEMENTS GET NEGOTIATED. SO NO, ON OCCASION WE WERE ASKED
7 AFTER ABOUT THE EXTRA COST OF THE LABOR.

8 Q. AFTER THE CONTRACT WAS SIGNED?

9 A. SURE, AND YOU GO BACK AND RENEGOTIATE THAT. THAT'S
10 MORE ON THE REDEVELOPMENT AGENCY SIDE.

11 Q. LET'S TALK ABOUT THE CITY. CAN YOU THINK OF ANY
12 INSTANCE WHERE THE CITY ENTERED INTO AN AGREEMENT WITH A
13 CONTRACTOR AND THEN VOTED TO PAY SUBSTANTIAL SUMS OF MONEY
14 ABOVE AND BEYOND WHAT THE CONTRACT CALLED FOR AFTER THE
15 CONTRACT WAS SIGNED?

16 A. NOT SUBSTANTIAL, BUT I RECALL WE'VE ADDED ADDENDUMS
17 TO A CONTRACT FOR SERVICES WHERE THE SCOPE OF WORK MAY HAVE
18 GOTTEN LARGER OR SMALLER AS OPPOSED TO THE TIME WE TOOK THE
19 INITIAL VOTE.

20 Q. LET'S LOOK AT THIS NORCAL AMENDMENT. DID THE SCOPE
21 OF THE WORK REALLY CHANGE WITH REGARD TO THE AMENDMENT?

22 A. SOMEWHAT, BUT NOT SIGNIFICANTLY.

23 Q. YOU'RE TALKING ABOUT THE TEN NEIGHBORHOOD CLEANUP
24 BINS, THE GARBAGE COMPOSITION STUDY AND THE E-WASTE SCRAP
25 PROGRAM, CORRECT?

26 A. YES.

27 Q. ITEMS WORTH MAYBE A FEW HUNDRED THOUSAND DOLLARS IN
28 COST?

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1 A. I DON'T KNOW WHAT THE EXACT AMOUNT IS.

2 Q. WE'VE HEARD TESTIMONY ABOUT THAT FROM NORCAL; WOULD
3 THAT SURPRISE YOU TO LEARN IT WAS WORTH SO LITTLE?

4 A. I DIDN'T HEAR THAT TESTIMONY.

5 Q. OKAY. THE CITY WAS GOING TO BE PAYING 11 MILLION
6 DOLLARS IF THE AMENDMENT WENT THROUGH?

7 A. CORRECT.

8 Q. WHAT WAS THE CITY GETTING AS CONSIDERATION FOR THIS

9 AMENDMENT?

10 A. WELL, SOME INCREASED SERVICES, BUT LABOR PEACE, I
11 THINK IS PART OF IT.

12 Q. AND IN THE AMENDMENT, IS THERE ANYTHING ABOUT LABOR
13 PEACE RECITED AS PART OF THE CONSIDERATION?

14 A. NO.

15 Q. AS A MATTER OF FACT, DIDN'T THE CITY ATTORNEY
16 ADVISE THE COUNCIL THAT THAT WOULD NOT BE A LEGALLY ADEQUATE
17 CONSIDERATION BECAUSE NORCAL WAS ALREADY OBLIGATED TO
18 PERFORM THE SERVICE, THEY HAD TO COME UP WITH ADDITIONAL
19 SERVICES IF THERE WAS ANY HOPE OF MAKING THIS CONTRACT
20 VALID; ISN'T THAT WHAT THE CITY ATTORNEY SAID?

21 A. THAT'S NOT MY RECOLLECTION OF WHAT HE SAID, NO.

22 Q. WE'LL GET TO THAT A LITTLE LATER ON WITH THE CITY
23 ATTORNEY. YOU DID UNDERSTAND THAT THE CITY WAS UNDER NO
24 LEGAL OBLIGATION TO AMEND THE CONTRACT?

25 A. I DID.

26 Q. OKAY.

27 A. THAT I DO REMEMBER RICK EXPLAINING TO US.

28 Q. IS THERE ANYTHING IN THE MAYOR'S MEMO ABOUT THE

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1 MAYOR DIRECTING NORCAL OR CWS TO GO WITH TEAMSTERS?

2 A. NO.

3 Q. NOW, LET'S LOOK AT PAGE TWO OF THE MEMO, THE SECOND
4 PARAGRAPH WHICH BEGINS:

5 HOWEVER, IT SOON BECAME CLEAR THAT THE
6 SITUATION WAS MORE COMPLEX.

- 7 A. I SEE IT.
- 8 Q. THERE' S A STATEMENT IN THE MEMO THAT SAYS:
- 9 AFTER COUNCIL APPROVAL, THE MAYOR' S OFFICE
- 10 LEARNED THAT THE WORKERS TO BE RETAINED FROM WASTE
- 11 MANAGEMENT WOULD BE EXPECTED TO CHANGE UNIONS.
- 12 DO YOU SEE THAT LINE?
- 13 A. I DO.
- 14 Q. WHICH COUNCIL APPROVAL DID YOU UNDERSTAND THIS MEMO
- 15 TO BE REFERRING TO?
- 16 A. I WOULD HAVE ASSUMED IT WOULD HAVE BEEN THE FINAL
- 17 ONE WE TOOK, WHICH WAS IN EITHER DECEMBER OR AFTER THAT.
- 18 Q. WELL, THERE WERE TWO VOTES ON THE PROPOSAL, AND
- 19 THIS WAS IN MARCH 2000, AND THERE WAS THE MARCH ' 01 VOTE
- 20 ACCEPTING THE CONTRACT, SO WHICH OF THE VOTES?
- 21 A. PROBABLY THE MARCH ' 01 IS THE ONE I WOULD REMEMBER
- 22 OR I WOULD HAVE THOUGHT THAT THAT WAS THE CASE.
- 23 Q. WHY DID YOU THINK THAT WAS THE CASE?
- 24 A. BECAUSE I THOUGHT I WOULD HAVE KNOWN ABOUT IT
- 25 SOONER IF THAT HAD NOT BEEN THE CASE.
- 26 Q. WE JUST SPENT SOME TIME LOOKING AT THE OCTOBER 10,
- 27 2000 COUNCIL MEETING ON THE FIRST VOTE ON THE NORCAL
- 28 PROPOSAL, CORRECT?

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- 1 A. CORRECT.
- 2 Q. AND DIDN' T MR. FLOTTE FROM THE ILWU SPEAK AT THE
- 3 COUNCIL AND SAY THAT HE REPRESENTED THE CWS WORKERS IN
- 4 OAKLAND AND SACRAMENTO AND THERE WAS AN EXPANSION AGREEMENT

5 THAT COVERED SAN JOSE AND CWS' S OPERATION IN SAN JOSE?

6 A. YES.

7 Q. DID YOU ALSO KNOW THAT WASTE MANAGEMENT, WHICH WAS
8 THE OUTGOING CONTRACTOR, USED THE TEAMSTERS TO REPRESENT ITS
9 MRF WORKERS?

10 A. I DON' T KNOW. I WOULD HAVE ASSUMED THAT, BUT I
11 DON' T RECALL THAT BEING SOMETHING THAT I WAS CONSIDERING.

12 Q. IF THAT WERE TRUE THOUGH, AND THERE WAS A
13 REQUIREMENT IN THE CONTRACT THAT CWS FIRST HIRE EXISTING
14 DISPLACED WORKERS, WOULDN' T THAT MEAN THAT THE WORKERS WOULD
15 BE EXPECTED TO CHANGE UNIONS?

16 A. IT COULD MEAN THAT; IT COULD ALSO MEAN THAT THE TWO
17 UNIONS THAT WERE HAVING A CONFLICT WOULD GO TO THE LABOR
18 MOVEMENT AND EITHER DEAL WITH THE CONFLICT THERE OR GO TO
19 THE LABOR RELATIONS BOARD AND FIGURE OUT WHO WOULD REPRESENT
20 THOSE WORKERS.

21 Q. IN ANY EVENT, YOUR TESTIMONY IS WHEN THE MEMO
22 SPEAKS ON PAGE TWO ABOUT, AFTER COUNCIL APPROVAL, THE
23 MAYOR' S OFFICE LEARNED THE WORKERS TO BE RETAINED FROM WASTE
24 MANAGEMENT WOULD BE EXPECTED TO CHANGE UNIONS, YOU THOUGHT
25 THAT REFERRED TO THE THIRD AND LAST VOTE ON THE CONTRACT IN
26 MARCH OF 2001?

27 A. CORRECT.

28 Q. OKAY. AND THEN LATER ON IN THE MEMO IT TALKS

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1 ABOUT:

2 TO CONFORM TO COUNCIL DIRECTION, THE MAYOR

3 OFFICE CONVENED A MEETING BETWEEN NORCAL AND THE
4 LEADERSHIP OF THE TEAMSTER' S LOCAL AND A
5 REPRESENTATIVE OF THE CENTRAL LABOR COUNCIL TO
6 IDENTIFY SOLUTIONS OF THE JURISDICTIONAL ISSUE.

7 DO YOU SEE THAT SENTENCE?

8 A. I DON' T.

9 Q. SAME PARAGRAPH THAT BEGINS, HOWEVER --

10 A. I SEE IT NOW.

11 Q. DID THE COUNCIL EVER DIRECT THE MAYOR TO MEET WITH
12 NORCAL AND THE TEAMSTERS AND CENTRAL LABOR COUNCIL TO
13 IDENTIFY SOLUTIONS TO THE JURISDICTIONAL ISSUE?

14 A. NO.

15 Q. WHAT DID YOU UNDERSTAND THAT STATEMENT TO BE A
16 REFERENCE TO?

17 A. I UNDERSTOOD THAT TO BE THAT THERE WAS PROBABLY
18 LABOR UNREST AND THAT THE MAYOR' S OFFICE TOOK LEADERSHIP IN
19 GETTING INVOLVED IN THAT.

20 Q. OKAY. NOW, LET' S TURN TO PAGE THREE. IF YOU LOOK
21 AT THE FIRST PARAGRAPH ON PAGE THREE, IT READS:

22 THE HIGHER COST WILL NOT INCREASE RATES FOR
23 OUR RESIDENTS.

24 DO YOU SEE THAT LINE?

25 A. I DO.

26 Q. HOW DID YOU THINK THAT IT WAS POSSIBLE TO PAY
27 NORCAL AN ADDITIONAL 11 MILLION DOLLARS BEYOND WHAT WAS
28 ORIGINALLY CALLED FOR IN THE CONTRACT WITHOUT INCREASING THE

1 RATES FOR THE RESIDENTS?

2 A. WELL, WHAT I WOULD HAVE ASSUMED, AND PROBABLY WHAT
3 I SHOULD HAVE ASKED AT THE TIME, WAS THAT IT WOULD TAKE
4 MONEY POTENTIALLY THAT WE WERE USING IN THE GENERAL FUND TO
5 SUPPLANT THE ENTERPRISE FUND WE USED FOR SINGLE-FAMILY
6 HOUSING AND RECYCLING, GARBAGE PICKUP.

7 Q. YOUR ASSUMPTION WAS THAT THE 11 MILLION DOLLARS WAS
8 GOING TO BE PAID FOR BY DIPPING FURTHER INTO THE GENERAL
9 FUND?

10 A. POTENTIALLY, AND THE OTHER POSSIBILITY IS THAT WE
11 HAD REACHED THE 100 PERCENT COST RECOVERY OR A LITTLE ABOVE
12 THAT, BECAUSE I REMEMBERED THAT AT SOME POINT THEY WERE -- I
13 DON'T KNOW IF IT WAS JIM HOLGERSON -- I REMEMBER SOMEONE
14 TALKING TO US ABOUT CREATING A RESERVE THAT LEFT SOME
15 FLEXIBILITY IF THERE WAS EVER A WORK STOPPAGE OR SOME OTHER
16 ACTION LIKE THAT, BUT I DON'T REMEMBER THE AMOUNT.

17 Q. YOU DIDN'T KNOW, I GUESS YOU'RE TELLING US, HOW IT
18 WAS, EXACTLY HOW IT WAS GOING TO WORK THAT NORCAL WAS GOING
19 TO GET THE EXTRA 11 MILLION DOLLARS AND THE RATES WERE NOT
20 GOING TO HAVE TO BE INCREASED?

21 A. YES. WHAT I JUST TOLD YOU IS WHAT I ASSUMED. I
22 DON'T REMEMBER ASKING THAT SPECIFICALLY.

23 Q. NOW, THERE'S A REFERENCE ABOUT SOMETHING BEING
24 OUTLINED IN AN ATTACHED MEMORANDUM FROM THE ADMINISTRATION.
25 DO YOU SEE THAT?

26 A. IS IT ON THE SAME SHEET?

27 Q. LET ME SEE IF I CAN FIND IT FOR YOU. IT'S AT THE
28 BOTTOM OF PAGE TWO. IT SAYS:

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1 AS OUTLINED IN THE ATTACHED MEMORANDUM, THE
2 ADMINISTRATION STAFF HAS REVIEWED THE AMENDMENT
3 REQUEST.

4 A. MM-HMM.

5 Q. DO YOU RECALL THERE BEING SOMETHING ATTACHED TO
6 THIS MEMO WHEN YOU SIGNED IT?

7 A. I DON'T RECALL.

8 Q. LET ME DIRECT YOUR ATTENTION TO PAGE THREE OF THE
9 MEMO WHERE THE MAYOR OUTLINES -- YOU DIDN'T CRAFT THIS MEMO,
10 RIGHT?

11 A. NO, I DIDN'T.

12 Q. YOU DIDN'T REQUEST THAT IT BE PREPARED, CORRECT?

13 A. NO, I DID NOT.

14 Q. IF YOU DIDN'T DO IT, THEN COUNCILMEMBER DANDO
15 DIDN'T, THAT WOULD HAVE LEFT ONLY THE MAYOR AND HIS STAFF TO
16 BE INVOLVED IN THIS MEMO, RIGHT?

17 A. THAT'S CORRECT.

18 Q. DID YOU SPEAK WITH MAYOR GONZALES ABOUT AMENDING
19 THE NORCAL AGREEMENT BEFORE SIGNING THIS MEMO?

20 A. UH -- I DON'T RECALL THAT I SPOKE TO HIM DIRECTLY.

21 Q. DID YOU SPEAK TO ANYONE ON HIS STAFF ABOUT THIS
22 SUBJECT?

23 A. I DON'T RECALL IF I DID.

24 Q. DID THE MAYOR SAY ANYTHING ABOUT ANY PROMISES OR
25 REPRESENTATIONS THAT MAY HAVE BEEN MADE TO NORCAL PRIOR TO
26 YOUR SIGNING THIS MEMO?

27 A. NO, HE DID NOT.

28 Q. DID THE MAYOR SAY ANYTHING ABOUT WHEN HE LEARNED

1 THAT THE WORKERS TO BE RETAINED FROM WASTE MANAGEMENT WOULD
2 BE EXPECTED TO CHANGE UNIONS?

3 A. NO, HE DIDN' T.

4 Q. DID THE MAYOR SAY ANYTHING ABOUT WHEN HE LEARNED
5 THAT THE WORKERS TO BE RETAINED FROM WASTE MANAGEMENT WOULD
6 BE TAKING A PAY CUT?

7 A. NO.

8 Q. DID THE MAYOR TELL YOU THAT HE WAS THE ONE TO
9 DIRECT NORCAL AND CWS TO SWITCH TO THE TEAMSTERS AT A
10 MEETING THAT TOOK PLACE ON OCTOBER 6, 2000 AT CITY HALL?

11 A. NO, HE DID NOT.

12 Q. WOULD THOSE FACTS HAVE BEEN IMPORTANT TO YOU TO
13 KNOW BEFORE DECIDING WHETHER OR NOT TO SIGN THIS MEMO?

14 A. YES.

15 Q. WHY?

16 A. WELL, ONE, I SUSPECT HAD I KNOWN THAT A LONG TIME
17 AGO WE WOULD HAVE, THAT WOULD HAVE BEEN TALKED ABOUT AT
18 COUNCI L, SO WE WOULDN' T HAVE BEEN IN THE SITUATION AT THIS
19 CONVERSATION.

20 Q. DID YOU TALK TO JOE GUERRA ABOUT AMENDING THE
21 NORCAL AGREEMENT BEFORE SIGNING THIS MEMO?

22 A. I DON' T RECALL SPECIFICALLY TALKING TO HIM, BUT IN
23 ALL LIKELIHOOD I WOULD HAVE TALKED TO HIM.

24 Q. ON ANY OF THOSE OCCASIONS YOU MIGHT HAVE SPOKEN TO
25 JOE GUERRA ABOUT AMENDING THIS AGREEMENT, DID MR. GUERRA SAY
26 ANYTHING ABOUT ANY PROMI SES OR REPRESENTATI ONS THAT MAY HAVE
27 BEEN MADE TO NORCAL?

28 A. NO.

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1 Q. DID MR. GUERRA SAY ANYTHING ABOUT DIRECTING NORCAL
2 OR CWS TO SWITCH TO THE TEAMSTERS?

3 A. NO.

4 Q. DID YOU SPEAK WITH ANYONE FROM NORCAL OR CWS ABOUT
5 AMENDING THIS AGREEMENT BEFORE SIGNING THIS MEMO?

6 A. I MAY HAVE.

7 Q. DO YOU RECALL WHO?

8 A. UH -- I'M FORGETTING THE GENTLEMAN'S NAME THAT I
9 REMEMBERED MEETING WITH.

10 Q. LET ME THROW OUT SOME NAMES. MICHAEL SANGIACOMO?

11 A. NO.

12 Q. BILL JONES?

13 A. NO.

14 Q. JOHN NICOLETTI?

15 A. YES.

16 Q. ONE OUT OF THREE ISN'T BAD.

17 A. MY MEMORY IS NOT THAT GOOD. I APOLOGIZE.

18 Q. WHEN DID YOU TALK WITH JOHN NICOLETTI?

19 A. I DON'T RECALL THE EXACT DATE, BUT I BELIEVE IT WAS
20 BEFORE THIS COUNCIL MEETING.

21 Q. OKAY. AND THE COUNCIL MEETING ON SEPTEMBER 21?

22 A. CORRECT.

23 Q. WHERE DID THIS DISCUSSION TAKE PLACE?

24 A. MY OFFICE.

25 Q. WHO ELSE WAS PRESENT?

26 A. I THINK IT MIGHT HAVE BEEN JUST JOHN AND I.

27 Q. DID MR. NICOLETTI SAY ANYTHING ABOUT ANY PROMISES
28 OR REPRESENTATIONS THAT MAY HAVE BEEN MADE TO NORCAL OR CWS?

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1 A. NO. HE DID SAY THAT RON WAS SUPPORTING --

2 Q. I'M SORRY. I'M HAVING TROUBLE HEARING.

3 A. I APOLOGIZE. I HAVE BEEN TALKING AN AWFUL LOT
4 LATELY.

5 Q. I CAN IMAGINE.

6 A. I DID SAY THAT WHEN THIS COMES FORWARD, THE
7 AMENDMENT COMES FORWARD, BECAUSE HE KNEW IT WOULD, HE HAD
8 THE MAYOR'S SUPPORT ON IT, BUT HE DID NOT INDICATE ANY, I
9 WOULD HAVE ASSUMED -- MY UNDERSTANDING OF THAT WOULD HAVE
10 BEEN THAT HE HAD TALKED TO RON BEFORE HE CAME TO SEE ME.

11 Q. DID MR. NICOLETTI SAY ANYTHING ABOUT THE MAYOR
12 DIRECTING NORCAL OR CWS TO SWITCH TO TEAMSTERS?

13 A. HE DID NOT.

14 Q. DID MR. NICOLETTI SAY ANYTHING ABOUT THE MAYOR
15 GIVING NORCAL OR CWS ANY ASSURANCES ABOUT BEING REIMBURSED
16 FOR THE INCREASED LABOR COSTS OF CWS SWITCHING TO THE
17 TEAMSTERS?

18 A. HE DID NOT.

19 Q. DID YOU BELIEVE THE MAYOR HAD AUTHORITY BY VIRTUE
20 OF HIS POSITION AS MAYOR TO DIRECT NORCAL OR CWS TO CHOOSE
21 ONE UNION OVER ANOTHER?

22 A. NO.

23 Q. DO YOU BELIEVE THE MAYOR HAD AUTHORITY BY VIRTUE OF
24 BEING THE MAYOR OF SAN JOSE TO MAKE PROMISES OR

25 REPRESENTATIONS ABOUT THE CITY PAYING EXTRA COMPENSATION TO
26 NORCAL?

27 A. IF HE MADE THOSE ON BEHALF OF THE CITY?

28 Q. YES, ON BEHALF OF THE CITY. DO YOU BELIEVE HE HAD

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1 THE AUTHORITY TO DO THAT?

2 A. NONE OF US DO, AS INDIVIDUALS, HAVE AUTHORITY TO DO
3 THAT.

4 Q. LOOK. IF WE WERE DEALING WITH THE SITUATION THAT
5 THE PARTIES BELIEVED IT WAS TOTALLY LEGAL AND ABOVE BOARD,
6 AND IT HAD BEEN THE CASE THAT PRIOR TO THE CITY SIGNING THE
7 AGREEMENT, THE MAYOR HAD TOLD NORCAL OR SUGGESTED TO NORCAL
8 THAT THEY NEEDED TO SWITCH TO THE TEAMSTERS, AND DON'T WORRY
9 ABOUT THE COST BECAUSE THE CITY WILL MAKE YOU WHOLE ON THOSE
10 COSTS, THE PARTIES TO THAT TRANSACTION THOUGHT THAT WAS
11 PERFECTLY ABOVE BOARD AND LEGAL, WHEN IT CAME TIME TO
12 ACTUALLY VOTE ON THIS PAYMENT AND THIS AMENDMENT, WOULDN'T
13 YOU EXPECT THOSE PEOPLE TO SHARE THAT INFORMATION WITH THE
14 REST OF THE COUNCIL?

15 A. IF THAT'S WHAT OCCURRED, YES.

16 Q. DID THEY SHARE THAT INFORMATION WITH YOU?

17 A. NO.

18 Q. I SEE WE'RE FIVE TO 12. I THINK WE HAVE TO TAKE
19 OUR NOON RECESS NOW. I APOLOGIZE. WE'RE GETTING CLOSE, BUT
20 WE HAVE A LITTLE MORE TIME, AND I UNDERSTAND BECAUSE OF
21 COMMITMENTS THAT YOU WON'T BE ABLE TO RETURN UNTIL 2:00
22 O' CLOCK.

23 A. THAT' S CORRECT.
24 THE FOREPERSON: LET ME REMIND YOU OF THE
25 CONFIDENTIALITY ADMONITION THAT YOU' RE NOT TO SAY OR TELL
26 ANYBODY WHAT YOU SAW OR SAID AT THIS SESSION.
27 THE WITNESS: I UNDERSTAND. THANK YOU.
28 MR. FINKELSTEIN: THANK YOU VERY MUCH. HAVE A

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1 NICE LUNCH.
2 THE FOREPERSON: WE WILL COME BACK AT 2:00
3 O' CLOCK.
4 MR. FINKELSTEIN: THANK YOU.
5 (THE LUNCHEON RECESS WAS TAKEN.)
6
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1 SAN JOSE, CALIFORNIA APRIL 12, 2006

2

3

AFTERNOON SESSION:

4

THE FOREPERSON: CAN I CALL THE GRAND JURY TO
5 ORDER? ALL OF THE GRAND JURORS ARE PRESENT EXCEPT FOR
6 MR. (NAME REDACTED).

7

MR. FINKELSTEIN: I'LL JUST REMIND YOU YOU'RE
8 STILL UNDER OATH, HAVING BEEN PREVIOUSLY SWORN. DO YOU
9 UNDERSTAND THAT?

10

THE WITNESS: I DO. THANK YOU.

11

BY MR. FINKELSTEIN:

12

Q. WHEN WE BROKE FOR THE AFTERNOON RECESS, WE WERE
13 TALKING ABOUT THE MAYOR'S SEPTEMBER MEMO YOU COSIGNED. DO
14 YOU RECALL THAT?

15

A. I DO.

16

Q. NOW, WE WERE DISCUSSING THE PROPOSED AMENDMENT, THE
17 11 MILLION DOLLAR AMENDMENT TO INCREASE NORCAL'S

18 COMPENSATION FOR INCREASED LABOR COSTS. DO YOU RECALL THAT?

19 A. I DO.

20 Q. LET ME ASK YOU THIS: THE CITY SELECTED NORCAL
21 THROUGH THE REQUEST FOR PROPOSAL PROCESS, CORRECT?

22 A. CORRECT.

23 Q. AND WOULDN'T ALLOWING ONE OF THE SUCCESSFUL
24 BIDDERS, IN THIS CASE NORCAL, TO COME BACK AFTER THE FACT
25 AND GET ADDITIONAL MONEY, WOULDN'T THAT CALL INTO QUESTION
26 THE INTEGRITY OF THE RFP PROCESS THAT THE CITY EMPLOYED TO
27 SELECT THE HAULERS?

28 A. I THINK IT WOULD, THE INCREASED COSTS WOULD HAVE

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1 COME CLOSE TO THE OTHER BIDS, YES.

2 SO YOU THINK IT ONLY WOULD CALL INTO QUESTION THE
3 INTEGRITY OF THE PROCESS IF IT WOULD HAVE RESULTED IN
4 BRINGING THE NORCAL COST UP TO THE AREA OF THE OTHER
5 BIDDERS. IS THAT WHAT YOU'RE SAYING?

6 A. YES.

7 Q. HOW WOULD OTHER BIDDERS KNOW THAT THERE WAS A
8 POSSIBILITY OF GOING BACK AFTER THE CONTRACT WAS SIGNED WITH
9 THE CITY AND GETTING ADDITIONAL MONEY? WOULD THERE BE ANY
10 WAY FOR THEM TO KNOW THAT?

11 A. THEY WOULD NOT.

12 Q. WELL, WOULDN'T A POLICY OF -- WOULDN'T LETTING
13 BIDDERS TO COME BACK AFTER THE FACT AND SEEK ADDITIONAL
14 COMPENSATION, WOULDN'T THAT ENCOURAGE BIDDERS TO LOW-BALL
15 THEIR BID, KNOWING THAT THEY COULD GET ADDITIONAL FUNDS

16 AFTER THEY HAD SECURED THE BID?

17 A. I THINK IN THIS PARTICULAR INSTANCE THERE WERE A
18 LOT OF CIRCUMSTANCES THAT WE DIDN'T FEEL COMFORTABLE WITH
19 THAT DIRECTION. IF YOU'RE ASKING ME, AND I THINK YOU ARE,
20 WHETHER IT IS A CONCERN OF MINE THAT OTHER PEOPLE MAY LOOK
21 AT THAT AS AN EXAMPLE, YES, IT IS A CONCERN.

22 Q. WHAT FACTORS WERE OPERATIVE HERE THAT YOU KNEW
23 ABOUT BACK IN SEPTEMBER 2004 THAT MADE YOU FEEL COMFORTABLE
24 SUPPORTING THIS AMENDMENT?

25 A. THE -- AS WE DISCUSSED BEFORE ABOUT THE PREVAILING,
26 WHAT I DISCUSSED EARLIER RELATED TO OUR NORMAL CONDUCT
27 RELATED TO THE PREVAILING WAGE AND LIVING WAGES MADE ME FEEL
28 COMFORTABLE ABOUT MOVING FORWARD, THAT THE PRICE WAS STILL

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1 LESS THAN OTHER BIDDERS, CUSTOMERS WERE GETTING GOOD
2 SERVICE, OTHER ELEMENTS OF THE CONTRACT WERE BEING LIVED UP
3 TO.

4 Q. WHY WAS THIS IN YOUR MIND, THE PREVAILING WAGE AND
5 LIVING WAGE ISSUE WHEN YOU NOW ACKNOWLEDGE TO US THE CITY'S
6 PREVAILING WAGE AND LIVING WAGE POLICIES DID NOT APPLY TO
7 THESE MRF WORKERS AT CWS?

8 A. I APOLOGIZE IF I HAVEN'T BEEN CLEAR ON THIS POINT,
9 BUT IT'S NOT MY CONTENTION THAT LIVING WAGE AND PREVAILING
10 WAGE POLICIES ARE THE SAME AS THE, I MEAN THAT THE LIVING
11 WAGE AND PREVAILING WAGE POLICIES ARE PART OF THE CURRENT
12 CONTRACT. THEY ARE NOT. BUT THE FACT THAT THE CITY IN
13 OTHER INSTANCES HAS BEEN, AS A PROCURER OF SERVICES, HAS

14 BEEN THE ORGANIZATION THAT HAS TAKEN UP THE SLACK OR PAID
15 FOR THE DIFFERENCE OF PREVAILING WAGE AND LIVING WAGE DID
16 NOT MAKE THAT TO ME VERY DIFFERENT RELATED TO PAYING PEOPLE
17 A DECENT WAGE FOR THE WORK THEY WERE DOING.

18 Q. ANY OTHER REASONS WHY YOU THOUGHT, WHY YOU
19 SUPPORTED THIS AMENDMENT?

20 A. FROM THE VERY BEGINNING OF THIS PROCESS, I WAS
21 CONCERNED ABOUT PREVAILING -- LABOR PEACE AND WORKER
22 RETENTION. AND MY CONCERNS -- AND STREET SWEEPING. AND MY
23 CONCERNS STAYED CONSISTENT THROUGHOUT THE PROCESS.

24 Q. SO IN LISTENING TO YOUR ANSWERS, IT DOESN'T SOUND
25 LIKE THE TEN ADDITIONAL NEIGHBORHOOD CLEANUP BINS OR E-SCRAP
26 PROGRAM OR THE GARBAGE COMPOSITION STUDY WERE THE FACTORS
27 THAT WERE IMPORTANT FOR YOU IN DECIDING TO SUPPORT THIS
28 AMENDMENT.

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1 A. THEY WERE MINOR FACTORS, BUT MY PRIMARY CONCERN IS
2 AS I STATED ALREADY.

3 Q. NOW, I THINK WE ALSO DISCUSSED THIS MORNING WHETHER
4 OR NOT YOU UNDERSTOOD THAT A PORTION OF THE 11 MILLION
5 DOLLARS WAS GOING TO BE PAID RETROACTIVELY FOR COSTS
6 INCURRED IN THE PAST FOR THESE EXTRA LABOR COSTS. AND I
7 THINK YOUR ANSWER WAS YOU WEREN'T CLEAR ON THAT --

8 A. I WASN'T CLEAR ON THE DATE THAT RETROACTIVITY WOULD
9 OCCUR. I DIDN'T KNOW WHAT DATE THE CHANGE HAPPENED RELATED
10 TO WORKERS GOING FROM ONE UNION TO ANOTHER.

11 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN PREVIOUSLY

12 MARKED AS EXHIBIT 91, A SEPTEMBER 16, 2004 MEMO TO THE MAYOR
13 AND CITY COUNCIL FROM DEPUTY CITY MANAGER JAMES HOLGERSON.

14 HAVE YOU SEEN THAT DOCUMENT BEFORE?

15 A. I DON'T RECALL SEEING IT, BUT IF IT CAME IN THE
16 COUNCIL PACKET --

17 Q. LET'S TRY IT THIS WAY. DO YOU HAVE ANY REASON TO
18 BELIEVE THAT, IN THE ORDINARY COURSE OF BUSINESS AT THE
19 CITY, YOU WOULD NOT HAVE RECEIVED A COPY OF THIS MEMO?

20 A. NO.

21 Q. IF YOU LOOK AT PAGE THREE, I THINK IT IS, THERE'S A
22 SCHEDULE OF PAYMENTS SHOWING THE DATES FOR WHICH THE PAYMENT
23 IS SOUGHT AND THE AMOUNT OF PAYMENT.

24 DO YOU SEE THAT?

25 A. I DO.

26 Q. YOU'LL NOTICE THE FIRST PAYMENT COVERS THE PERIOD
27 OF JULY 1, '02 TO JULY 1, '03; IT'S IN THE AMOUNT OF 1.9
28 MILLION DOLLARS.

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1 A. CORRECT.

2 Q. THIS MATTER IS BEING BROUGHT TO THE COUNCIL IN
3 SEPTEMBER OF '04, CORRECT?

4 A. CORRECT.

5 Q. FROM THIS MEMO IT WOULD BE CLEAR THAT THIS FIRST
6 PAYMENT COVERS THE PERIOD JULY 1, '02 TO JULY 1, '03 AS THE
7 AMOUNT OF 1.9 MILLION DOLLARS?

8 A. CORRECT.

9 Q. AND THEN THE SECOND PAYMENT IS THE PERIOD JULY 1,

10 '03 TO JULY 1, '04; IT'S IN EXCESS OF 2.1 MILLION DOLLARS?

11 A. CORRECT.

12 Q. AGAIN, THAT WOULD BE RETROACTIVE, WOULD IT NOT?

13 A. CORRECT.

14 Q. AND FROM THIS MEMO, IS THERE ANY REASON THAT YOU
15 WOULDN'T HAVE READ THE MEMO OR REALIZED THAT OF THIS 11
16 MILLION DOLLARS, AT LEAST FOUR MILLION IS RETROACTIVE FOR
17 COSTS ALREADY INCURRED?

18 A. NO.

19 Q. AND SINCE THE FIRST DATE FOR WHICH PAYMENT IS
20 SOUGHT IS JULY 1, '02, THAT HAPPENS TO BE THE FIRST DATE
21 FROM WHEN SERVICES WERE SUPPOSED TO START BY NORCAL AND CWS,
22 CORRECT?

23 A. CORRECT.

24 Q. SO IF YOU HAD SEEN THIS MEMO BACK IN SEPTEMBER
25 OF '04, NO DOUBT YOU WOULD HAVE REALIZED THAT THE WORKERS
26 WERE BEING PAID BACK TO JULY 1, '02, WHEN THE CONTRACT FIRST
27 STARTED, CORRECT?

28 A. THAT'S LIKELY.

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1 Q. IS THERE ANY REASON WHY YOU WOULDN'T HAVE MADE THAT
2 CONNECTION?

3 A. NO.

4 Q. SO, PRESUMABLY, YOU UNDERSTOOD AT THE TIME THAT YOU
5 SUPPORTED THIS AMENDMENT THAT THE WORKERS HAD ALREADY BEEN
6 PAID THIS EXTRA AMOUNT, CORRECT?

7 A. CORRECT.

8 Q. AND THE MONEY THAT THE 11 MILLION DOLLARS WAS GOING
9 TO REIMBURSE NORCAL FOR MONEY THAT HAD ALREADY BEEN PAID OUT
10 TO WORKERS?

11 A. CORRECT.

12 Q. LET ME SHOW YOU NEXT WHAT'S BEEN MARKED AS EXHIBIT
13 92, WHICH IS A CERTIFIED COPY OF THE COUNCIL MINUTES FOR
14 SEPTEMBER 21, 2004.

15 AND LET ME DIRECT YOUR ATTENTION TO ITEM 7.3 ON
16 THE AGENDA.

17 FIRST OF ALL, DID YOU WANT TO READ IT IN ITS
18 ENTIRETY BEFORE I ASK QUESTIONS?

19 A. GO AHEAD, AND IF I NEED TO LOOK SOMETHING UP --

20 Q. FIRST OF ALL, IF WE LOOK UNDER THE HEADING
21 DOCUMENTS FILED, IT INDICATES ACCORDING TO THE MINUTES THAT
22 THIS SEPTEMBER 16 MEMO FROM MAYOR GONZALES CO-SIGNED BY VICE
23 MAYOR DANDO AND YOURSELF WAS FILED AS PART OF THE COUNCIL
24 RECORD, CORRECT?

25 A. CORRECT.

26 Q. AND COULD YOU JUST BRIEFLY TELL US WHAT ACTION THE
27 COUNCIL TOOK ON THE PROPOSED AMENDMENT TO THE NORCAL
28 AGREEMENT?

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1 A. THE COUNCIL VOTED TO SUPPORT IT WITH THREE PEOPLE
2 OPPOSING IT -- TWO OR THREE PEOPLE.

3 Q. I THINK, IF I RECALL CORRECTLY, YOU ACTUALLY MADE
4 THE MOTION TO AMEND THE AGREEMENT?

5 A. THAT'S WHAT IT SAYS HERE.

- 6 Q. INDEPENDENT OF THAT, DO YOU RECALL THAT?
- 7 A. NO.
- 8 Q. NOW, AT THE TIME THAT YOU VOTED IN FAVOR OF
- 9 AMENDING THE NORCAL AGREEMENT, YOU UNDERSTOOD THAT THERE WAS
- 10 NO LEGAL OBLIGATION ON THE PART OF THE CITY TO AMEND THE
- 11 EXISTING CONTRACT?
- 12 A. I DID.
- 13 Q. AT THE TIME PRIOR TO VOTING -- AT THE VOTE BEFORE
- 14 THE COUNCIL, DID THE MAYOR OR NORCAL SAY ANYTHING ABOUT
- 15 PROMISES OR REPRESENTATIONS THAT MAY HAVE BEEN MADE TO
- 16 NORCAL?
- 17 A. NO.
- 18 Q. DID THE MAYOR OR NORCAL SAY ANYTHING ABOUT THE
- 19 MAYOR DIRECTING NORCAL OR CWS TO USE TEAMSTERS INSTEAD OF
- 20 LONGSHOREMEN?
- 21 A. NO, THEY DID NOT.
- 22 Q. AT THE TIME YOU VOTED IN FAVOR OF AMENDING THE
- 23 NORCAL AGREEMENT, YOU UNDERSTOOD THAT CWS HAD ALREADY
- 24 ENTERED INTO A COLLECTIVE BARGAINING AGREEMENT WITH THE
- 25 TEAMSTERS, CORRECT?
- 26 A. CORRECT.
- 27 Q. AS A MATTER OF FACT -- NEVER MIND.
- 28 AT THE TIME THAT YOU VOTED ON THIS AMENDMENT TO

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- 1 NORCAL'S AGREEMENT WITH THE CITY, DID YOU HAVE ANY REASON --
- 2 ON SEPTEMBER 21, THAT IS, DID YOU HAVE ANY REASON TO SUSPECT
- 3 THAT PROMISES OR ASSURANCES HAD BEEN MADE TO NORCAL IN SOME

4 KIND OF SECRET SIDE DEAL?

5 A. NO, I DID NOT.

6 Q. NOW, PRIOR TO VOTING IN THE NORCAL AGREEMENT, DID
7 YOU RECEIVE A MEMO DATED SEPTEMBER 20, 2004 FROM
8 COUNCILMEMBERS REED AND LEZOTTE?

9 A. I DID.

10 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED AS GRAND
11 JURY EXHIBIT 93, WHICH IS A MEMO TO THE MAYOR AND COUNCIL
12 DATED SEPTEMBER 20, 2004 FROM COUNCILMEMBERS LEZOTTE AND
13 REED.

14 A. THANK YOU.

15 Q. DO YOU THINK THAT YOU RECEIVED THIS MEMO PRIOR TO
16 YOUR VOTE ON SEPTEMBER 21?

17 A. YES.

18 Q. NOW, ITEM TWO ON THE MEMO REFERS TO PROMISES OR
19 REPRESENTATIONS THAT MAY HAVE BEEN MADE TO NORCAL NOT BEING
20 DISCLOSED TO THE COUNCIL WHEN NORCAL WAS APPROVED AS THE
21 PREFERRED VENDOR, CORRECT?

22 A. CORRECT.

23 Q. WHAT DID YOU THINK THAT REFERRED TO WHEN YOU SAW
24 THAT?

25 A. I THOUGHT IT REFERRED TO AN ACCUSATION THAT I
26 DIDN'T BELIEVE TO BE TRUE.

27 Q. WHAT ACCUSATION WAS THAT?

28 A. ANY PROMISES OR REPRESENTATIONS MADE TO NORCAL WERE

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1 NOT DISCLOSED. I DIDN'T KNOW WHAT THAT REFERRED TO OR WHO

2 THEY WERE REALLY TALKING ABOUT, SO IT SOUNDED LIKE AN
3 ACCUSATION THAT WAS NOT SPECIFIC OR CLEAR.

4 Q. WELL, DID ANYONE INQUIRE OF THE AUTHORS OF THE
5 MEMO, WHO I TAKE IT AT THAT TIME WERE PRESENT AT THE COUNCIL
6 VOTE, WHAT THEY MEANT BY THAT STATEMENT AND WHAT THE SOURCE
7 OF THE INFORMATION WAS?

8 A. I DON'T RECALL, BUT I DON'T ALSO RECALL CHUCK OR
9 LINDA SAYING WHAT IT WAS EITHER.

10 Q. WELL, IS IT TRUE THEN IN YOUR MIND THAT AT THE TIME
11 YOU VOTED ON THE SEPTEMBER 16, 2004 NORCAL AMENDMENT, THAT
12 ANY PROMISES OR REPRESENTATIONS THAT MAY HAVE BEEN MADE TO
13 NORCAL WERE NOT DISCLOSED TO THE COUNCIL WHEN NORCAL WAS
14 APPROVED AS THE PREFERRED VENDOR?

15 A. YOU LOST ME PART OF THE WAY THROUGH THAT QUESTION.
16 I'M SORRY.

17 Q. OKAY. THERE'S A STATEMENT IN PARAGRAPH TWO THAT
18 REFERS TO PROMISES OR REPRESENTATIONS HAVING BEEN MADE AND
19 NOT DISCLOSED TO THE COUNCIL WHEN NORCAL WAS FIRST APPROVED
20 AS THE PREFERRED VENDOR. DO YOU SEE THAT?

21 A. I DO.

22 Q. WELL, IN YOUR MIND, BASED ON WHAT YOU KNEW THEN,
23 NOT WHAT YOU MAY HAVE SUBSEQUENTLY COME TO UNDERSTAND, BUT
24 BASED ON WHAT YOU KNEW THE, BACK IN SEPTEMBER OF '04, DID
25 YOU BELIEVE THAT TO BE A CORRECT STATEMENT?

26 A. NO.

27 Q. I THINK WE MAY BE HAVING A GRAMMATICAL OR
28 SEMANTICAL ISSUE. THE AUTHORS ARE SAYING IF THERE ANY

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1 PROMISES OR REPRESENTATIONS MADE TO NORCAL THEY WERE NOT
2 DISCLOSED TO THE COUNCIL. DO YOU DISAGREE WITH THAT?

3 A. NO; THAT I AGREE WITH.

4 Q. I THINK THAT'S WHAT MY QUESTION WAS.

5 A. I'M SORRY.

6 Q. YOU AGREED WITH THAT STATEMENT BASED ON YOUR STATE
7 OF MIND THEN IN '04 THAT ANY PROMISES OR REPRESENTATIONS
8 THAT MAY HAVE BEEN MADE TO NORCAL WERE NOT DISCLOSED TO THE
9 COUNCIL, CORRECT?

10 A. CORRECT.

11 Q. AND AS FAR AS YOU YOURSELF, DID YOU INITIATE ANY
12 INQUIRY INTO WHAT PROMISES OR REPRESENTATIONS MAY HAVE BEEN
13 MADE?

14 A. I DID NOT.

15 Q. IS THERE A PARTICULAR REASON WHY NOT?

16 A. MY FEELING WOULD HAVE BEEN THAT IF SOMEONE HAD
17 BROUGHT SOMETHING LIKE THAT UP, THAT EITHER COUNCILMEMBER
18 COULD HAVE EITHER ASKED THAT QUESTION ON THE DAIS OR -- IN
19 FACT, I DO REMEMBER LINDA ASKING A SERIES OF QUESTIONS, BUT
20 I DON'T REMEMBER WHAT MEETING IT WAS AT, AND GETTING THEM
21 RESPONDED TO.

22 Q. LET'S LOOK AT PARAGRAPH FOUR IN THAT MEMO. IT
23 SAYS:

24 ALLOWING A SIDE DEAL TO ALTER THE TERMS OF
25 THAT AGREEMENT IS NOT FAIR TO OTHER COMPANIES WHO
26 PARTICIPATED IN THE RECYCLE PLUS RFP PROCESS BUT
27 WERE NOT MADE AWARE OF THIS ARRANGEMENT.

28 DO YOU SEE THAT?

1 A. I DO.

2 Q. WHAT SIDE DEAL DID YOU THINK THE MEMO WAS REFERRING
3 TO?

4 A. I DID NOT KNOW. AS A MATTER OF FACT, EVEN AS I
5 READ IT TODAY, MY INTERPRETATION OF THAT IS THE ACTUAL
6 ACTION WE WERE TAKING ON THE 21ST OF SEPTEMBER.

7 Q. YOU THOUGHT THE ACTION THAT WAS COMING BEFORE THE
8 COUNCIL IN A PUBLIC MEETING AND THAT HAD BEEN PLACED ON THE
9 AGENDA AND DULY NOTICED WAS A SIDE DEAL?

10 A. I THOUGHT THAT THE AUTHORS COULD HAVE BEEN IMPLYING
11 THAT, YES.

12 Q. IN WHAT WAY WOULD A PUBLIC ACTION BY THE COUNCIL AT
13 A COUNCIL MEETING BE A SIDE DEAL, IN YOUR MIND?

14 A. WELL, IF SOME MEMBER OF THE COUNCIL THOUGHT IT WAS
15 EGREGIOUS OR INAPPROPRIATE, PEOPLE USE LANGUAGE TO DESCRIBE
16 THEIR CONCERN. THAT COULD HAVE BEEN ONE OF THEM.

17 Q. YOU DIDN'T CONSTRUE A SIDE DEAL AS SOME SECRET
18 BACK-ROOM DEAL OUTSIDE OF THE KNOWLEDGE OF THE ENTIRE
19 COUNCIL?

20 A. AT THAT TIME I DIDN'T -- I HAD NO REASON TO BELIEVE
21 THAT ANYTHING LIKE THAT HAD OCCURRED, THAT THERE WAS SOME
22 SIDE DEAL STRUCK. SO I DIDN'T BELIEVE THAT AT THE TIME.

23 Q. I GUESS WHAT I'M TRYING TO INQUIRE ABOUT WITH THIS
24 MEMO IS WHETHER OR NOT THIS MEMO IN SEPTEMBER OF '04 GAVE
25 YOU REASON TO BELIEVE THAT SOMETHING LIKE THAT MAY HAVE
26 OCCURRED?

27 A. NO, IT DID NOT.

28 Q. OKAY. THERE'S NO RIGHT OR WRONG ANSWER. I DON'T

1 BELIEVE YOU CAN TELL US WHETHER YOU CONNECTED THE DOTS OR
2 DREW INFERENCES OR DIDN'T, AND THAT'S WHAT I'M TRYING TO
3 FIND OUT. I GUESS YOUR TESTIMONY IS DESPITE THIS MEMO, YOU
4 DIDN'T UNDERSTAND OR FIGURE OUT THAT THERE MIGHT HAVE BEEN
5 SOME SIDE DEAL?

6 A. OR BELIEF.

7 Q. OR BELIEF THAT THERE WAS A SIDE DEAL?

8 A. THAT'S CORRECT.

9 Q. NOW, IS THERE AN ATTACHMENT, IS THERE A LETTER
10 ATTACHED TO THE EXHIBIT IN FRONT OF YOU, THE HOLGERSON MEMO,
11 AN ATTACHMENT A?

12 A. LET ME LOOK. THERE IS.

13 Q. WHAT IS ATTACHMENT A, CAN YOU TELL US?

14 A. IT IS A LETTER TO MR. DEL BORGS DORF FROM NORCAL.

15 Q. WHO IN PARTICULAR AT NORCAL IS THE MAIN AUTHOR OF
16 THE LETTER?

17 A. JOHN NICOLETTI.

18 Q. AND IS THERE A PARAGRAPH THAT STARTS OUT:

19 LET ME FIRST RECOUNT SOME BACKGROUND RELATING
20 TO THE ADDITIONAL LABOR COST.

21 A. THERE IS.

22 Q. AND YOU'LL SEE THAT, IS THERE A SENTENCE THAT SAYS:

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

28 TEAMSTERS' WAGE SCALE?

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1 A. YES.

2 Q. NORCAL WAS ADVISED THAT THE CITY DID NOT WANT A
3 ROCK-BOTTOM PRICE FOR ITS NEW COLLECTION CONTRACT IF DOING
4 SO REQUIRED DISPLACING EXISTING RECYCLING FACILITY WORKERS
5 OR FORCING WORKERS TO ACCEPT LOWER PAY.

6 DO YOU SEE THAT?

7 A. I DO.

8 Q. DO YOU HAVE ANY IDEA WHO IN THE CITY MIGHT HAVE SO
9 ADVISED NORCAL?

10 A. NO, I DO NOT.

11 Q. DID YOU MAKE ANY INQUIRES INTO WHETHER THE MAYOR'S
12 OFFICE HAD URGED NORCAL TO EXPLORE AN AGREEMENT WITH CWS
13 THAT WOULD ALLOW CWS TO RETAIN EXISTING WORKERS AT THE
14 HIGHER TEAMSTERS' SCALE?

15 A. MY, NO. AND THE REASON IS THAT MY ASSUMPTION WOULD
16 HAVE BEEN THAT BECAUSE OF THE WORKER RETENTION COMPONENT IN
17 THE CONTRACT THAT THEY WOULD HAVE IN FACT BEEN IN THAT
18 SITUATION, THAT THEY WOULD HAVE BEEN BRINGING ON WORKERS
19 THAT ANYWAY, THAT THEY WOULD HAVE BEEN CHANGING WORKERS, NOT
20 CHANGING, BUT THOSE WORKERS WOULD HAVE RETAINED THEIR JOBS
21 AND COME OVER.

22 Q. BUT THERE WAS NOTHING IN THE RFP WORKER RETENTION
23 PROVISION THAT SPECIFIED WHAT WAGES AND BENEFITS THE REHIERED
24 WORKERS HAD TO BE PAID WAS THERE?

25 A. NO, THERE WAS NOT.

26 Q. THERE WAS NOTHING TO YOUR KNOWLEDGE IN CITY POLICY
27 THAT REQUIRED THE REHIRED WORKERS TO BE PAID A SPECIFIC WAGE
28 OR BENEFIT?

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1 A. YOU' RE CORRECT.

2 Q. PRIOR TO THE SEPTEMBER 21, 2004 VOTE, DID EITHER
3 THE MAYOR OR NORCAL EVER TELL YOU THAT ON FRIDAY, OCTOBER 6,
4 2000, THAT IS THE FRIDAY BEFORE THE FIRST COUNCIL VOTE ON
5 THE NORCAL PROPOSAL, THE MAYOR TOLD NORCAL THAT HE WOULD
6 REALLY LIKE TO SEE THE CWS FACILITY BE A TEAMSTER FACILITY,
7 AND THE MAYOR ALSO ASKED NORCAL IF THEY WOULD MAKE THAT
8 HAPPEN?

9 A. NO.

10 Q. PRIOR TO THE SEPTEMBER 21, 2004 VOTE, DID THE MAYOR
11 OR NORCAL TELL YOU THAT AT THAT SAME FRIDAY, OCTOBER 6
12 MEETING THE MAYOR TOLD NORCAL, YOU DO IT AND WE' LL MAKE YOU
13 WHOLE?

14 A. NO.

15 Q. WOULD IT HAVE BEEN IMPORTANT FOR YOU TO KNOW ABOUT
16 THAT, IF IN FACT IT OCCURRED, PRIOR TO YOUR CASTING YOUR
17 VOTE ON SEPTEMBER 21, 2004?

18 A. YES.

19 Q. WHY WOULD IT HAVE BEEN IMPORTANT FOR YOU TO KNOW
20 THAT?

21 A. IT WOULD HAVE BEEN IMPORTANT BECAUSE WE WOULD HAVE,
22 OR I WOULD HAVE ENCOURAGED US TO HAVE RESOLVED ALL THESE
23 ISSUES EARLIER WHEN WE TOOK THE VOTE THE FIRST TIME,

24 WHETHER, WHATEVER THE FALLOUT OF THAT MAY HAVE BEEN, I WOULD
25 HAVE WANTED TO HAVE THAT DISCUSSION IN THE OCTOBER TIME
26 FRAME.

27 Q. BEFORE THE FINAL APPROVAL AND SIGNING OF THE
28 CONTRACT?

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1 A. YES, AND ALSO BECAUSE THE AUDITOR WOULD HAVE
2 UNDERSTOOD THE IMPLICATIONS OF THAT -- ALL OF US WOULD HAVE
3 UNDERSTOOD THE IMPLICATIONS OF THAT.

4 Q. DOES IT STRIKE YOU THERE MAY HAVE BEEN SOME, THE
5 LEGALITY OF THAT MIGHT HAVE BEEN QUESTIONED AS WELL?

6 A. I'M NOT A LAWYER.

7 Q. OKAY. GRANTED, YOU'RE NOT A LAWYER. DID YOU HAVE
8 ANY UNDERSTANDING ABOUT WHETHER OR NOT THERE WOULD BE
9 ANYTHING IMPROPER ABOUT CONDITIONING YOUR VOTE AS A
10 COUNCILMEMBER ON SOMEONE ELSE DOING SOMETHING OR NOT DOING
11 SOMETHING?

12 A. WELL, THAT DEPENDS UPON IF IT'S AN ELEMENT OF A
13 CONTRACT. SO THE ANSWER IS IF IT WAS NOT AN ELEMENT OF THE
14 CONTRACT, YES.

15 Q. YES, WHAT?

16 A. YES, IT WOULD BE IMPROPER.

17 Q. AND IN THIS CASE, GOING WITH THE TEAMSTERS WAS NOT
18 AN ELEMENT OF THE CONTRACT, WAS IT?

19 A. THAT'S CORRECT.

20 Q. DID YOU ATTEND THE DECEMBER 14, 2004 CITY COUNCIL
21 VOTE TO THE NORCAL CONTRACT AMENDMENT?

- 22 A. (NO RESPONSE.)
- 23 Q. THERE WAS A SECOND VOTE?
- 24 A. THERE WAS.
- 25 Q. DO YOU RECALL IT BEING IN DECEMBER OF '04?
- 26 A. I APOLOGIZE, I DON'T RECALL.
- 27 Q. IT'S NOT A MEMORY TEST.
- 28 A. I KNOW. I WOULD BE FLUNKING IT.

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- 1 Q. THAT'S OKAY. I JUST HAPPEN TO HAVE A CERTIFIED
- 2 COPY OF THE MINUTES OF DECEMBER 14 --
- 3 A. THAT DOESN'T SURPRISE ME.
- 4 MR. FINKELSTEIN: I WILL ASK TO HAVE THIS MARKED
- 5 AS EXHIBIT 100.
- 6 THE FOREPERSON: SO MARKED.
- 7 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
- 8 JURY EXHIBIT GRAND JURY 100.)
- 9 BY MR. FINKELSTEIN:
- 10 Q. I THINK IF YOU LOOK AT ITEM 7.2, I THINK THAT'S THE
- 11 RIGHT --
- 12 A. THANK YOU. I FOUND IT.
- 13 Q. JUST GIVE ME A MOMENT. NOW, HAVE YOU HAD A CHANCE
- 14 TO LOOK AT IT?
- 15 A. YES. I SEE SOME THINGS THAT LOOK FAMILIAR.
- 16 Q. LET ME JUST ORIENT MYSELF HERE. IF YOU GO TO PAGE
- 17 33 OF THE MINUTES THAT DEAL WITH ITEM 7.2, THERE IS A
- 18 PARAGRAPH THAT SAYS IN RESPONSE TO VICE MAYOR DANDO'S
- 19 QUESTION ABOUT WHO MADE THE REQUEST TO NEGOTIATE WITH LOCAL

20 350 RATHER THAN LONGSHOREMEN, NORCAL REPRESENTATIVE
21 NICOLETTI SAID HE DID NOT KNOW.

22 DO YOU SEE THAT?

23 A. YES.

24 Q. HAVE I READ THAT ACCURATELY?

25 A. YOU DID.

26 Q. IT GOES ON TO SAY THAT HE, MEANING MR. NICOLETTI,
27 REPRESENTING NORCAL, ADDED THAT HE WAS NOT WITH NORCAL
28 DURING THE INITIAL PERIOD OF NEGOTIATIONS AND CONFIRMED THAT

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1 THE REQUEST OF COUNCILMEMBER CORTESE THAT HE HAD NO PERSONAL
2 KNOWLEDGE OF HOW IT CAME TO BE THAT NEGOTIATIONS WERE WITH
3 LOCAL 350 AS OPPOSED TO LONGSHOREMEN?

4 DO YOU SEE THAT?

5 A. I DO.

6 Q. NOW, I TAKE IT HAVING LOOKED AT THE MINUTES YOU NOW
7 RECALL THAT YOU WERE PRESENT AT THIS MEETING, CORRECT?

8 A. I DO.

9 Q. YOU RECALL THAT YOU, AMONG OTHERS, VOTED IN FAVOR
10 OF THE AMENDMENT, CORRECT?

11 A. I DO.

12 Q. DO YOU RECALL THIS EXCHANGE BETWEEN VICE MAYOR
13 DANDO AND JOHN NICOLETTI OF NORCAL?

14 A. VAGUELY.

15 Q. OKAY. DOES MAYOR GONZALES, WAS MAYOR GONZALES
16 PRESENT FOR THAT EXCHANGE?

17 A. YES.

18 Q. OKAY. AT ANY TIME DURING THE HEARING ON ITEM 7.2,
19 THE NORCAL AMENDMENT, DID MAYOR GONZALES EVER SPEAK UP AND
20 SAY, WHY, IT WAS ME, I WAS THE ONE WHO THOUGHT THE TEAMSTERS
21 SHOULD REPRESENT THESE WORKERS BECAUSE OF ALL THESE VARIOUS
22 REASONS? DID HE EVER SAY ANYTHING LIKE THAT?

23 A. NO.

24 Q. CAN YOU THINK OF ANY REASON WHY, IF THE MAYOR HAD
25 LEGITIMATELY ASKED OR DIRECTED NORCAL TO WORK WITH THE
26 TEAMSTERS, HE WOULD NOT SPEAK UP AND DECLARE THAT FACT
27 DURING THIS COUNCIL MEETING WHEN THE QUESTION WAS PUT BEFORE
28 THE COUNCIL BY VICE MAYOR DANDO?

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1 A. NO.

2 Q. I TAKE IT THE COUNCIL DID TAKE THE ACTION INDICATED
3 IN THE MINUTES, WHICH WAS TO APPROVE OF THE 11 MILLION
4 DOLLARS IN EXTRA COMPENSATION TO NORCAL, CORRECT?

5 A. RIGHT.

6 Q. NOW, SO I GUESS THE ONLY REMAINING QUESTIONS FOR
7 YOU ARE HOW, IF EVER, DID YOU EVER LEARN THAT SOMEONE FROM
8 THE CITY HAD ASKED NORCAL AND CWS TO SWITCH FROM ILWU
9 WORKERS TO TEAMSTERS?

10 A. I HAVE NO KNOWLEDGE OF THAT BEING THE CASE.

11 Q. SO YOU NEVER LEARNED THAT TO BE THE CASE?

12 A. NO.

13 Q. AND HOW DID YOU FIRST LEARN THAT SOMEONE FROM THE
14 CITY MAY HAVE TOLD NORCAL THAT THE CITY WOULD PAY THE EXTRA
15 LABOR COSTS FOR CWS SWITCHING FROM LONGSHOREMEN TO

16 TEAMSTERS?

17 A. THROUGH THE INVESTIGATOR'S REPORT, MR. GRAHAM, THAT
18 WE HAD HIRED.

19 Q. THAT WOULD HAVE BEEN AFTER THE GRAND JURY REPORT
20 THAT BECAME PUBLIC?

21 A. RIGHT.

22 MR. FINKELSTEIN: I HAVE NO FURTHER QUESTIONS AT
23 THIS TIME. I HAVE TO SEE IF THE JURORS HAVE SOME MORE
24 QUESTIONS, SO JUST BEAR WITH ME FOR A MOMENT.

25 THE WITNESS: DO YOU WANT ME TO LEAVE THE ROOM?

26 MR. FINKELSTEIN: NO. WE HAVE SOME ADDITIONAL
27 QUESTIONS FOR YOU.

28 YOU SEEM TO BE POPULAR.

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1 LET ME ASK -- SOME OF THESE MAY HAVE BEEN ASKED,
2 BUT PLEASE BEAR WITH US.

3 Q. GIVEN THAT THE 11 MILLION DOLLARS WAS GOING TO BE
4 PAID TO NORCAL, HOW COULD SOMEONE PRESUME THAT THE MRF
5 WORKERS WOULD RECEIVE ANY OF IT?

6 A. I BELIEVE THAT THE ACTUAL ACTION WE TOOK REQUIRED
7 THAT WE LOOK AT THE PAYROLLS TO MAKE SURE THAT WE KNEW HOW
8 MUCH THE WORKERS WERE ACTUALLY MAKING SO THAT IN FACT THEY
9 WOULD BE PAID THAT AMOUNT OF MONEY. AND WE DID LOOK AT THE
10 PAYROLL TO VERIFY THE 11 MILLION DOLLARS.

11 Q. YOU'RE SAYING THE 11 MILLION DOLLARS, IN FACT A
12 LITTLE MORE, BUT THE 11 MILLION DOLLAR NUMBER IS ACTUALLY
13 BASED ON LOOKING AT THE WAGE AND BENEFIT DIFFERENTIALS?

14 A. CORRECT.

15 Q. OKAY. ANOTHER JUROR WANTS TO KNOW, THIS GOES BACK
16 TO THE OCTOBER 10, 2000 COUNCIL MEETING.

17 WE HEARD ROBERTO FLOTTE FROM THE ILWU ADDRESS THE
18 COUNCIL, AND THE JUROR BELIEVES THAT HE SAID TO THE COUNCIL
19 THAT HIS UNION, WHICH WOULD BE REPRESENTING THE CWS MRF
20 WORKERS TO AN EXPANSION OF THE EXISTING COLLECTIVE
21 BARGAINING AGREEMENT, WOULD ACCEPT THE CURRENT WAGES OF THE
22 THEN EXISTING SORTERS. DO YOU RECALL THAT?

23 A. I DON'T RECALL EXACTLY WHAT HE SAID.

24 Q. OKAY. LET ME ASK YOU THIS SORT OF HYPOTHETICALLY
25 IF YOU DON'T RECALL IT.

26 IF MR. FLOTTE HAD INFORMED THE COUNCIL THAT THE
27 ILWU WORKERS CURRENTLY REPRESENTING CWS MRF WORKERS IN
28 OAKLAND AND SACRAMENTO, WAS ANTICIPATING REPRESENTING THEM

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1 IN SAN JOSE ON THE EXPANSION AGREEMENT, WAS WILLING TO
2 ACCEPT THE THEN CURRENT WAGES, THE JUROR WOULD LIKE TO KNOW
3 WHY IS THERE AN ISSUE ABOUT A UNION CHANGE AND A NEUTRALITY
4 AGREEMENT? CAN YOU EXPLAIN THAT?

5 A. I COULD. IT WOULD BE MY SUPPOSITION ABOUT WHY; I
6 DON'T REALLY KNOW THE ANSWER TO THAT QUESTION.

7 Q. OKAY. CAN YOU TRY?

8 A. ABSOLUTELY. I THINK THE CONTENTION WOULD HAVE BEEN
9 FROM ONE UNION TO THE OTHER THAT, BETWEEN THE UNIONS THAT A
10 NEUTRALITY AGREEMENT WOULD HAVE ALLOWED THE WORKERS AS THEY
11 MOVE OVER TO A NEW LOCATION TO CHOOSE BETWEEN UNIONS. SO

12 THAT WAS THE THE SIGNIFICANCE OF THE NEUTRALITY AGREEMENT.

13 Q. SINCE YOU HAVE A BACKGROUND IN LABOR, CORRECT?

14 A. I DO.

15 Q. LET ME -- HOW DID YOU THINK A NEUTRALITY AGREEMENT
16 WOULD WORK? IN OTHER WORDS, YOU HAVE ONE COMPANY, CWS, WITH
17 ONE OPERATION, RECYCLING, AND THEY JUST HAVE DIFFERENT
18 FACILITIES IN THE BAY AREA.

19 IF A NEUTRALITY AGREEMENT WERE ENTERED INTO, WOULD
20 THE VOTE BE DECIDED BASED ON JUST THE SAN JOSE WORKERS, OR
21 WOULD IT BE ALL OF CWS' S WORKERS?

22 A. IT ONLY WOULD HAVE BEEN FOR THAT ONE SHOP, THAT ONE
23 SITE, ONE LOCATION.

24 Q. THIS IS JUST YOUR UNDERSTANDING. YOU' RE NOT A
25 LAWYER, CORRECT?

26 A. CORRECT. I DID WORK IN THE LABOR MOVEMENT. I WAS
27 UNION --

28 Q. LET ME ASK YOU THIS: SAFEWAY HAS STORES THROUGHOUT

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1 THE BAY AREA, AND PRESUMABLY THEY HAVE A UNION THAT
2 REPRESENTS THE SAFEWAY CLERKS, CORRECT?

3 A. THAT' S CORRECT.

4 Q. ALBERTSON' S HAS STORES TO A LESSER AMOUNT
5 THROUGHOUT THE BAY AREA WHICH MAY HAVE A DIFFERENT UNION
6 REPRESENTING THOSE WORKERS, CORRECT?

7 A. THEY DO NOT; THEY HAVE THE SAME UNION.

8 Q. LET' S ASSUME THEY HAVE A DIFFERENT UNION. ASSUMING
9 THEY HAD A DIFFERENT UNION, IF SAFEWAY BOUGHT OUT ONE OF THE

10 ALBERTSON' S' S STORES AND CONVERTED IT TO A SAFEWAY STORE,
11 AND ASSUMING THAT THE ALBERTSON' S WORKERS HAD BEEN
12 REPRESENTED BY A DIFFERENT UNION, WOULD THEY GET TO DECIDE
13 AND BE REPRESENTED IN THEIR DEALS WITH SAFEWAY WITH A
14 DIFFERENT UNION FROM THE REST OF SAFEWAY' S WORKERS?

15 A. IT WOULD DEPEND.

16 Q. ON WHAT?

17 A. ON WHAT THE ACTUAL EMPLOYEES WANTED. IT WOULD
18 DEPEND ON WHAT UNIONS WERE INVOLVED, IF THEY DECIDED THAT
19 THEY WANTED TO REPRESENT THOSE WORKERS. PART OF THE REASON
20 THERE' S A NATIONAL LABOR RELATIONS BOARD AND THERE IS A
21 WHOLE SYSTEM WITHIN AFL/CIO TO SORT OUT THESE JURISDICTIONAL
22 DEBATES IS BECAUSE THEY HAPPEN ALL THE TIME, AND YOU' RE
23 CORRECT THAT ARE, THAT THERE ARE SOME CONTRACTS THAT GOVERN
24 WHERE EXPANSION OCCURS AND WHERE IT DOESN' T OCCUR, AND THERE
25 ARE SOME AGREEMENTS BETWEEN UNIONS ABOUT WHAT WORKERS REALLY
26 WANT AND REPRESENT.

27 Q. IS IT YOUR UNDERSTANDING IF AN EMPLOYER HAS AN
28 EXISTING COLLECTIVE BARGAINING AGREEMENT WITH THE UNION THAT

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1 PROVIDES THAT IF THERE' S EXPANSION IN THE SAME GENERAL AREA
2 FOR THE SAME KIND OF WORK, THE WORKERS WILL BE COVERED BY
3 THE EXISTING CBA?

4 A. THAT' S CORRECT.

5 Q. ISN' T THAT THE SITUATION HERE WITH CWS?

6 A. THAT' S CORRECT.

7 Q. SO THEY HAD A VALID ARGUMENT FOR THE ILWU

8 REPRESENTING THESE WORKERS?

9 A. THAT'S CORRECT.

10 Q. AND IN YOUR VIEW, THE CITY HAD NO LEGITIMATE
11 INTEREST IN GETTING IN THE MIDDLE OF A DISPUTE?

12 A. THAT'S CORRECT. THE ONLY EXCEPTION TO THAT MIGHT
13 HAVE BEEN IF GARBAGE WAS GOING TO PILE UP ON PEOPLE'S
14 STREETS AND THERE WAS SOME ROLE WE PLAYED WITH GOVERNING THE
15 CONTRACTS. YOU'RE CORRECT, THE REASON I WOULD NOT HAVE
16 INTERVENED, EVEN THOUGH THE UNIONS BOTH TALKED TO ME ABOUT
17 IT IS THAT IT'S NOT OUR ROLE.

18 Q. THAT'S WHAT YOU TOLD MR. MORALES PRIOR TO THE FIRST
19 VOTE?

20 A. YES.

21 Q. HE WAS NOT HAPPY ABOUT THAT?

22 A. THAT'S CORRECT. I ALSO TOLD THAT TO THE ILWU, BUT
23 THEY WEREN'T ANGRY.

24 Q. OKAY. AS FAR AS GARBAGE PILING UP ON THE STREET,
25 WE KNOW THAT IN THE FIRST SEVERAL MONTHS OF THE JULY 1, '02
26 START DATE, CWS'S RECYCLING FACILITY IN SAN JOSE WAS NOT
27 ONLINE, RIGHT?

28 A. THAT'S CORRECT.

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1 Q. GARBAGE DIDN'T PILE UP ON THE STREETS, DID IT?

2 A. I DON'T KNOW WHAT STRATEGIES WERE IN PLACE TO AVOID
3 THAT.

4 Q. YOU DON'T KNOW WHETHER OR NOT NORCAL DIVERTED THE
5 RECYCLING MATERIAL TO A DIFFERENT FACILITY?

6 A. YES. AND I THINK THERE'S A DISTINCTION, AGAIN, AN
7 OPERATIONAL ISSUE AND A LABOR ISSUE. IN TERMS OF GARBAGE
8 PILING UP ON THE STREETS, I MEAN, MEANING THAT THERE ARE
9 CONTINGENCY PLANS YOU WOULD USE, THAT WOULD BE DIFFERENT
10 DEPENDING ON THE CHALLENGE YOU WERE HAVING.

11 Q. LET'S STAY WITH YOUR BACKGROUND IN LABOR. THE
12 DRIVERS WORKING FOR NORCAL WERE REPRESENTED BY TEAMSTERS,
13 RIGHT?

14 A. CORRECT.

15 Q. MRF WORKERS WERE REPRESENTED BY ILWU AT LEAST
16 INITIALLY UNDER THIS EXPANSION, RIGHT?

17 A. CORRECT.

18 Q. CWS WAS A SEPARATE BUSINESS FROM NORCAL, RIGHT?

19 A. CORRECT.

20 Q. TEAMSTERS COULD NOT HAVE LEGALLY STRUCK CWS, ISN'T
21 THAT TRUE, BECAUSE THAT WOULD BE A SECONDARY --

22 A. DEPENDS ON WHAT THEIR CURRENT AGREEMENT IS WITH
23 THEIR EMPLOYER, A.

24 AND B, IRRESPECTIVE OF WHETHER OR NOT THE LAW
25 ALLOWS THEM TO DO IT, THEY COULD STILL DO IT.

26 AND C, DEPENDING ON WHETHER OR NOT THE WORKERS
27 THAT WERE IN CWS CONSIDERED THEMSELVES MEMBERS OF THE
28 TEAMSTERS, THAT MAY HAVE BEEN A LITTLE MORE COMPLICATED.

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1 THAT'S WHY YOU HAVE THE NLRB AND ALL THE INFRASTRUCTURE
2 WITHIN THE AFL/CIO TO DEAL WITH IT.

3 Q. AND THE EXPERTISE IN DEALING WITH THIS, WHICH THE
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4 CITY DOESN' T NECESSARILY HAVE?

5 A. THAT' S CORRECT.

6 Q. DO YOU KNOW WHETHER OR NOT THE MAYOR HAS ANY
7 EXPERTISE IN THESE LABOR ISSUES?

8 A. I DO NOT.

9 MR. FINKELSTEIN: ANOTHER QUESTION FROM A JUROR IS
10 IF THIS 11 MILLION DOLLAR ADDITIONAL LABOR COST WOULD HAVE
11 CAUSED NORCAL' S BID TO EXCEED THE NEXT LOWEST BID, WOULD YOU
12 HAVE STILL VOTED TO PAY THE ADDITIONAL LABOR COST?

13 THE WITNESS: NO.

14 MR. FINKELSTEIN: WITH REGARD TO THE AMENDMENT OF
15 THE NORCAL AGREEMENT, DO YOU RECALL THAT CITY ATTORNEY DOYLE
16 GAVE THE OPINION THAT THE ADDITIONAL ITEMS OF STATED
17 CONSIDERATION, THE TEN ADDITIONAL NEIGHBORHOOD CLEANUP BINS,
18 THE GARBAGE COMPOSITION STUDY, AND THE E-WASTE SCRAP
19 PROGRAM, IN HIS VIEW COULD CONSTITUTE LEGAL CONSIDERATION,
20 DID YOU ACCEPT THAT VIEW WHEN YOU MADE YOUR VOTE, DID YOU
21 AGREE OR DISAGREE WITH THE CITY ATTORNEY' S VIEW THAT --

22 A. (NO RESPONSE.)

23 Q. THAT' S A LONG, COMPLICATED QUESTION.

24 DURING THE COUNCIL' S CONSIDERATION OF THE NORCAL AMENDMENT
25 IN '04, THERE WAS AN ISSUE RAISED ABOUT WHETHER OR NOT THIS
26 WOULD CONSTITUTE A GIFT OF PUBLIC FUNDS. DO YOU RECALL
27 THAT?

28 A. YES, I DO.

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1 Q. THE CITY ATTORNEY OPINED ON THIS SUBJECT AND GAVE
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2 HIS VIEW OF THE LAW ON THAT SUBJECT, CORRECT?

3 A. HE DID.

4 Q. I THINK HE INDICATED TO THE COUNCIL THAT THESE
5 EXTRA LABOR COSTS COULD NOT BE THE LEGAL CONSIDERATION
6 BECAUSE NORCAL WAS ALREADY OBLIGATED BY THE EXISTING
7 CONTRACT TO DO THAT SERVICE, RIGHT?

8 A. THAT'S CORRECT.

9 Q. SO THE CITY ATTORNEY SUGGESTED SOME ALTERNATE
10 CONSIDERATIONS THAT IN HIS VIEW COULD POSSIBLY CONSTITUTE
11 VALID LEGAL CONSIDERATION; DO YOU RECALL THAT?

12 A. I DO NOT.

13 MR. FINKELSTEIN: ANOTHER JUROR WOULD LIKE TO KNOW
14 WHAT DETERMINES WHO SIGNS ON TO THESE MEMOS THAT WE'VE
15 TALKED ABOUT TO THE COUNCIL, AND IS THERE ANYTHING THAT
16 RESTRICTS THE NUMBER OF COUNCILMEMBERS THAT CAN SIGN ON TO A
17 MEMO.

18 A. THE RESTRICTION IS YOU CAN'T HAVE MORE THAN FIVE
19 PEOPLE, BECAUSE THEN IT WOULD BE A VIOLATION OF THE BROWN
20 ACT, BECAUSE THERE ARE 11 OF US.

21 Q. SIX WOULD BE A QUORUM?

22 A. CORRECT, AND A VIOLATION OF THE BROWN ACT. THANK
23 YOU. THE SECOND ISSUE IS SOMETIMES WHEN I'M SIGNING ON TO A
24 MEMO OR TRYING TO GET SOMEONE ELSE, I WILL CHOOSE SOMEONE
25 WHO REALLY CARES ABOUT THE ISSUE OR WHO I THINK BELIEVES
26 ABSOLUTELY OPPOSITE OF ME, SO I'M GOING TO SEE IF I CAN WOO
27 THEM INTO AGREEING WITH ME.

28 SO IT'S A LITTLE BIT, DEPENDS ON THE TOPIC, AND

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1 SOMETIMES PEOPLE HAVE AN AREA OF EXPERTISE. FOR EXAMPLE, IF
2 I'M INTERESTED IN DOING SOMETHING THAT'S ENVIRONMENTAL, I
3 SEEK OUT LINDA LEZOTTE, BECAUSE SHE UNDERSTANDS THE
4 ENVIRONMENT. THERE ARE OTHER COLLEAGUES WHO HAVE AREAS OF
5 EXPERTISE, AND I WILL SEEK THEM OUT.

6 Q. LET ME ASK YOU THIS, BROUGHT UP BY ANOTHER JUROR'S
7 QUESTION. WOULD IT HAVE MATTERED TO YOU AS A
8 COUNCIL MEMBER --

9 A. THAT'S COMMERCE. (AIRPLANE FLYING OVER.)

10 Q. WOULD IT HAVE MATTERED TO YOU AS A MEMBER OF THE
11 COUNCIL WHETHER THE INCREASED WAGES AND BENEFITS WERE PAID
12 TO CWS'S MRF WORKERS AS ILWU WORKERS VERSUS TEAMSTER
13 WORKERS?

14 A. NO. THAT WOULDN'T HAVE MADE A DIFFERENCE.

15 Q. SO AS FAR AS WHICH UNION REPRESENTED THE WORKERS,
16 THAT WAS NOT THE ISSUE FOR YOU, CORRECT?

17 A. CORRECT.

18 Q. THE ISSUE FOR YOU WAS THE WAGES AND BENEFITS PAID
19 TO THE WORKERS?

20 A. THAT'S CORRECT.

21 Q. LET ME JUST LOOK AT AN EXHIBIT FOR A MOMENT. LET
22 ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 16 TO THIS
23 PROCEEDING. ARE YOU ABLE TO READ IT FROM WHERE YOU ARE?

24 A. YES.

25 Q. THIS IS AN OCTOBER 9, 2000 LETTER. THAT WOULD BE
26 THE DAY BEFORE THE FIRST COUNCIL VOTE, CORRECT?

27 A. CORRECT.

28 Q. AND IT'S FROM VICTOR DUONG, VICE PRESIDENT OF CWS,

1 CORRECT?

2 A. CORRECT.

3 Q. IT'S TO MAYOR GONZALES, AND IT SAYS THAT CWS WILL
4 PAY SORTERS HIRED PURSUANT TO THE CITY OF SAN JOSE RECYCLE
5 PLUS CONTRACT AWARD, WAGES AND BENEFITS AT LEAST EQUIVALENT
6 TO THOSE PRESENTLY BEING PAID TO WORKERS OCCUPYING THESE
7 POSITIONS UNDER THE CURRENT AGREEMENTS IN SAN JOSE.

8 DO YOU SEE THAT?

9 A. I DO.

10 Q. DID THE MAYOR EVER SHARE THAT LETTER WITH YOU?

11 A. NO.

12 Q. DID HE EVER MENTION ANYTHING ABOUT THAT TO YOU?

13 A. NO.

14 Q. IS THAT INFORMATION THAT YOU WOULD HAVE LIKED TO
15 HAVE HAD BEFORE CASTING THESE VARIOUS VOTES?

16 A. YES.

17 Q. GIVEN THE DATE OF THAT LETTER, OCTOBER 9, DOES THAT
18 SUGGEST TO YOU THAT AT LEAST THE MAYOR KNEW THAT CWS WAS
19 GOING TO PAY HIGHER WAGES AND BENEFITS THAN THOSE SET OUT IN
20 THEIR PROPOSAL PRIOR TO THE FIRST VOTE BY THE CITY COUNCIL?

21 A. IT DOES.

22 Q. NOW, DO YOU RECALL WHETHER OR NOT IN '04 -- WE
23 TALKED ABOUT THE NINE PERCENT RATE HIKE IN '03; DO YOU
24 RECALL THERE BEING A SECOND RATE HIKE IN '04, THE SECOND
25 NINE PERCENT?

26 A. YES.

27 Q. THAT WAS PRIOR TO THE VOTE ON THE AMENDMENT,
28 CORRECT?

1 A. CORRECT.

2 Q. AND WHAT DID YOU UNDERSTAND THAT SECOND RATE HIKE
3 TO BE, OR WAS IT AGAIN FOR ADDITIONAL COST RECOVERY?

4 A. YES. AND ONE THING THAT HAS OCCURRED, AND I
5 APOLOGIZE, I DON'T REMEMBER ALL OF MY DATES, BUT YOU MAY
6 RECALL WE WERE STILL GOING THROUGH A PRETTY SIGNIFICANT
7 BUDGET CRUNCH AND DECREASE, SO MY ASSUMPTION WAS THAT WE
8 WERE RELIEVING THE GENERAL FUND AND MAKING THE PROGRAM COST
9 RECOVERY, AND THERE MIGHT HAVE BEEN OTHER THINGS LIKE
10 INCREASED COSTS FOR FUEL AND THINGS.

11 Q. IN OTHER WORDS, THE NORCAL AGREEMENT DID PROVIDE
12 FOR SOME INCREASES IN COMPENSATION BASED UPON CERTAIN
13 OCCURRENCES, CORRECT?

14 A. THAT IS MY ASSUMPTION.

15 Q. CERTAIN COST OF LIVING ADJUSTMENTS?

16 A. CORRECT.

17 Q. THAT'S BEEN WHAT WE HAVE BEEN TALKING ABOUT WITH
18 THE EXTRA LABOR COSTS; THAT'S SOMETHING NOT PROVIDED FOR IN
19 THE ORIGINAL CONTRACT?

20 A. THAT'S CORRECT.

21 Q. SINCE YOU BROUGHT UP THE CONDITION OF THE BUDGET,
22 AT THE TIME THE COUNCIL APPROVED THIS 11 MILLION DOLLAR
23 AGREEMENT TO THE NORCAL AGREEMENT, WHAT WAS THE CONDITION OF
24 THE CITY'S BUDGET?

25 A. WE HAVE MADE CUTS ON AVERAGE OF ABOUT SEVEN OR
26 EIGHT MILLION DOLLARS A YEAR SINCE 2002, 2001. THEY RANGED

27 IN THAT, SIGNIFICANT IN THE GENERAL FUND.

28 Q. IS IT FAIR TO SAY THAT AT THE TIME THE COUNCIL

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1 APPROVED THE 11 MILLION DOLLAR AMENDMENT TO THE NORCAL
2 AGREEMENT, THE CITY DID NOT HAVE EXCESS REVENUE LYING
3 AROUND?

4 A. THAT'S CORRECT.

5 Q. AS A MATTER OF FACT, THE CITY WAS STILL MAKING
6 ADDITIONAL BUDGET CUTS, CUTTING BACK CERTAIN SERVICES?

7 A. THAT'S CORRECT.

8 MR. FINKELSTEIN: ANY OTHER QUESTIONS? IT'S LIKE
9 A COUNCIL MEETING.

10 I THINK I'M GOING TO HAVE TO NOT ASK THIS
11 QUESTION.

12 LET ME SEE IF I CAN ASK IT A DIFFERENT WAY -- I
13 THINK WE'LL HAVE TO FOREGO THAT QUESTION.

14 ANY OTHER QUESTIONS?

15 COUNCILMEMBER CHAVEZ, I WANT TO THANK YOU FOR
16 COMING BACK THE SECOND TIME.

17 A. THIRD TIME.

18 Q. THIRD TIME. WE HAVE NO MORE QUESTIONS AT THIS
19 TIME, BUT WE ARE NOT EXCUSING WITNESSES UNTIL THE
20 INVESTIGATION IS CONCLUDED, WHICH MEANS IN THE EVENT
21 SOMETHING COMES UP WE LEARN LATER ON AND NEED TO ASK YOU
22 ABOUT, THAT YOU MAY BE CALLED TO RETURN TO GIVE ADDITIONAL
23 TESTIMONY. BUT OTHERWISE, YOU'RE FREE TO GO ABOUT YOUR
24 BUSINESS AND THE FOREPERSON WILL REMIND YOU OF THE

25 ADMONITION, AND THANK YOU VERY MUCH.

26 THE WITNESS: THANK YOU. AND I'M HAPPY TO COME
27 BACK.

28 THE FOREPERSON: WITHOUT READING THE ENTIRE

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1 ADMONITION, THE BOTTOM LINE IS YOU'RE NOT TO COMMUNICATE
2 ANYTHING THAT YOU HAVE HEARD, SAID, OR SEEN DURING THIS
3 PROCEEDING WITH ANYBODY UNTIL THE COURT OPENS THE
4 TRANSCRIPT. IS THAT UNDERSTOOD?

5 THE WITNESS: YES, SIR. THANK YOU.

6 MR. FINKELSTEIN: THANK YOU VERY MUCH.

7 THE FOREPERSON: WHY DON'T WE RECESS FOR FIVE
8 MINUTES.

9 (A BRIEF RECESS WAS TAKEN.)

10 THE FOREPERSON: LET ME CALL THE GRAND JURY TO
11 ORDER, PLEASE.

12 THE NEXT WITNESS WILL BE COUNCILMEMBER REED, AND I
13 UNDERSTAND THERE IS ONE JUROR WHO WOULD LIKE TO DECLARE
14 KNOWLEDGE OF COUNCILMEMBER REED.

15 A JUROR: I KNOW HIM THROUGH, WE WERE ON THE
16 CHAMBER BOARD TOGETHER. HE'S IN ROTARY CLUB AND I HAVE IN
17 THE PAST SUPPORTED HIM, BUT I THINK I CAN STILL BE
18 OBJECTIVE; HE'S NOT A FRIEND.

19 MR. FINKELSTEIN: WOULD YOU BE ABLE TO ASSESS AND
20 JUDGE COUNCILMEMBER REED'S CREDIBILITY USING THE SAME
21 YARDSTICK YOU WOULD USE AGAINST ANY OTHER WITNESS WHO MAY
22 GIVE TESTIMONY HERE?