

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3
4 ANTOINETTE GONZALES, CAROLL
5 AUSTIN, SARAH CLOVER, and ANNETTE
6 MORA, JAMES PESCECETTI and A CLASS OF
7 SIMILARLY SITUATED CITY EMPLOYEES,
8
9 Plaintiffs,

10 vs. Case No. 1:09-CV-00520-JB-RLP

11 THE CITY OF ALBUQUERQUE; ED
12 ADAMS, Chief Administrative Officer; and
13 ESTHER TENENBAUM, Division Manager, in
14 their individual and official capacities,
15
16 Defendants.

17
18 DEPOSITION OF ESTHER TENENBAUM
19 January 12, 2010
20 9:33 a.m.
21 City of Albuquerque Legal Department
22 Fourth Floor, One Civic Plaza, Northwest
23 Albuquerque, New Mexico 87102

24 PURSUANT TO THE FEDERAL RULES OF CIVIL
25 PROCEDURE this deposition was:

TAKEN BY: PAUL S. LIVINGSTON, ESQ.
 ATTORNEY FOR PLAINTIFFS

REPORTED BY: M. Teresa Torrez, CCR
 New Mexico CCR #159
 RUSSIN WILLIAMS REPORTING
 1608 Fifth Street, Northwest

1 Q. And then documentation of the release from
2 employment.
3 A. We would have the warnings that were issued,
4 the coachings that had been done. That would all be in
5 the file.
6 Q. Okay. Are you referring to the employee's
7 personnel file?
8 A. The 311 file.
9 Q. Well, how is that different from the personnel
10 file?
11 A. I don't know what's in the personnel files.
12 I've never been to HR to look.
13 Q. Okay. So you have a departmental -- I think
14 we generally call it department file or a City file.
15 A. Correct. We have a department file.
16 Q. You have a department file, but it is in the
17 nature of a personnel file. It would have hiring,
18 performance, termination.
19 A. It has performance, it has counseling, it has
20 merit, it has recognition, it has P-30s.
21 Q. Okay.
22 A. There could be something else in there.
23 (Exhibit 5 was marked for identification.)
24 Q. Okay. I've handed you what's been marked
25 Exhibit 5, and it's entitled Immediate Termination. Are

1 those your grounds for immediate termination?
2 A. Correct.
3 Q. I guess that's with the understanding that
4 there may be extraordinary other grounds that aren't
5 listed.
6 A. Exactly.
7 Q. And when you talked about Nicole Bordlemay,
8 you were looking at N, "Intentionally or inappropriately
9 disconnecting a call"?
10 A. Correct. And M, "lack of respect or
11 professionalism [for] Citizens." And also "Would impair
12 the operation or efficiency of [the] City department,
13 or" -- Actually, it's the public harm, the one above
14 that.
15 Q. Okay. Now, you say those are not charges?
16 A. Well, I don't know what you mean by "charges."
17 Q. Well, when you say, "You did this, and so
18 therefore I'm doing that." When you say, "You did
19 this," that's a charge, isn't it?
20 MR. BERGMANN: Objection to the form of
21 the question. She can answer if she knows.
22 A. I don't know what you mean by "charges." I --
23 I will lay the facts on the line. For instance, in
24 Nicole Bordlemay's case, I had the call, was willing to
25 play it, offered three times. She did not want to hear

1 it because she knew exactly what she had done on a call.
2 Q. Well, you do understand that if -- if we were
3 talking about a classified employee, that the employee
4 would have the right to respond, to give their side of
5 the story. Is that correct?
6 A. I don't know anything about classified
7 employees, so I would be remiss to respond. But I will
8 tell you that Nicole did have the opportunity in her
9 particular case to respond.
10 Q. Okay. And then a classified employee, whether
11 you know about -- all about it or not, has a process
12 under the Personnel Board for a hearing. Isn't that
13 correct?
14 MR. BERGMANN: Object to the form --
15 A. I don't know.
16 MR. BERGMANN: -- of the question.
17 A. I don't know. Honestly, Mr. Livingston, I'm
18 not familiar whatsoever with classified employees.
19 Q. Okay.
20 A. I've never worked in a classified employee
21 environment.
22 Q. So is it fair to say, then, that you've never
23 actually studied what the City does with its classified
24 employees?
25 A. I have read what the City does. I don't know

1 what they do because I've never been able to practice
2 what I've read. I've read it, but I've not practiced it
3 or used it to know how the process actually works.
4 Q. Okay. So you do know that the City has a
5 process for classified employees that allows them an
6 opportunity for a hearing.
7 A. Correct.
8 Q. Can you tell us what is different about 311
9 that the CCC -- that would suggest that that right to a
10 hearing should not be given to the employees?
11 A. Well, here's a very good example. Here is a
12 call that was recorded, and not the first of -- not the
13 only person where the service was below what we expect.
14 It was disrespectful to this citizen. It is not the way
15 we do business. If we were in a classified role, we
16 would have had to have continued to tolerate that
17 behavior, which impacts the reputation of the City as
18 well as of our center, until all the processes were
19 completed.
20 When there's an infraction in an
21 unclassified role, we can sit down and have a discussion
22 and try and change that behavior immediately so that it
23 doesn't continue to impact anybody until a hearing or
24 processes take place.
25 Q. So you're not aware of any ability to take the

1 employee out of the workplace, to put him on
 2 administrative leave, for example, under the City's
 3 process?
 4 A. (Shakes head.)
 5 Q. You see the City process as one that just
 6 delays the inevitable disciplinary action?
 7 A. Well, I think it depends on your business,
 8 Mr. Livingston. If your business can afford certain
 9 margin of error, that's fine. But when people are being
 10 hung up on or refused service, that is -- that is
 11 contrary to what we are there to do.
 12 Q. Okay. Well, let's talk a minute about
 13 business, as you just said. 911 operators are
 14 classified employees, aren't they?
 15 A. I believe so.
 16 MR. BERGMANN: Object to the form of the
 17 question. She can answer.
 18 A. I believe so. I don't know for a fact.
 19 Q. And, if anything, 911 operators are in a more
 20 crucial position where they can't hang up on
 21 employees -- on -- on citizens, correct?
 22 A. 911 operators don't have the same role as we
 23 do.
 24 Q. So their role --
 25 A. Theirs is quite different.

1 Q. And yours is more critical?
 2 A. I don't think there's a merit of critical. I
 3 think it's the type of work that we do. Ours is to help
 4 the citizen get what it is that they need in a very
 5 courteous, professional manner. And quality is very,
 6 very critical. At 911, in the past, they did not have a
 7 quality measurement.
 8 Q. They didn't have any measurement of --
 9 A. How they speak to people.
 10 Q. Not how they speak to people --
 11 A. That's our quality.
 12 Q. -- but how quickly they answer phones and --
 13 MR. BERGMANN: I'm going to have a
 14 standing objection to all 911 questions so I don't have
 15 to keep repeating them, Paul.
 16 MR. LIVINGSTON: Okay. She can answer.
 17 A. I -- I don't know about 911 except that I was
 18 asked to go in when Michael Padilla was there because
 19 there was no quality program, meaning how you measure
 20 the effectiveness and the politeness and courtiness --
 21 courteousness of each call. That is what we are based
 22 on.
 23 Q. So effectiveness isn't how effectively the
 24 call is handled?
 25 A. Depends on how --

1 Q. It's just politeness?
 2 A. Depends on how you want to talk about
 3 effectiveness. That can be measured by numbers, tone,
 4 responses. It all depends on your business.
 5 Q. Well, I haven't heard you say anything about
 6 results.
 7 A. We have -- Our results are our key performance
 8 indicators.
 9 Q. But politeness is equally as important as --
 10 A. Yes, at 311.
 11 Q. -- results?
 12 A. That is where our quality is built from.
 13 Q. Did you do anything at any point to advise
 14 employees that they can be terminated at will, without
 15 any right to be heard?
 16 A. Did I?
 17 Q. Yeah.
 18 A. No.
 19 Q. Are you aware of anyone else in the City of
 20 Albuquerque who has informed these employees that they
 21 have a right to -- don't have a right to be heard?
 22 A. I was advised when I was hired.
 23 Q. That --
 24 A. That I am unclassified, I don't have a right
 25 to be heard. And I was advised that all of 311 was

1 going to be unclassified.
 2 Q. Right. And who advised you?
 3 A. Michael Padilla.
 4 Q. Okay. And he was in the role that you're in
 5 now?
 6 A. Correct.
 7 Q. But you haven't advised any of the employees
 8 of what you were advised.
 9 A. I will -- I will advise them they're
 10 unclassified. But I will not advise them that they're
 11 at the will of a dismissal or termination.
 12 Q. And why is that?
 13 A. I don't think you should threaten people.
 14 It's not the thing you should do.
 15 Q. Well, don't you threaten people when you
 16 dismiss them without giving them a right to a hearing?
 17 A. It's not a threat. That's a fact.
 18 Q. Okay. The -- Do you know anything about the
 19 origin of the unclassified nature of the 311 operators?
 20 A. When I came on board, I was told that all of
 21 311 was unclassified. That's the depth of my knowledge.
 22 But I'd always worked in an unclassified environment so
 23 didn't know -- didn't feel like there was going to be
 24 any big difference.
 25 Q. But you hadn't worked for a government --

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1 Agent II's that you knew, and supervisors?
2 A. Let me go back and look through the list.
3 This does look like that, yes. Except for there's a
4 person on here who's no longer employed.
5 Q. Who is that?
6 A. Keri Waites.
7 (Whereupon, Mr. Michael A. Garcia
8 exits the deposition room.)
9 Q. Okay.
10 A. And Ms. Bordlemay.
11 Q. So if it had been November 20th, that would be
12 right, because she hadn't been terminated.
13 A. Well, Ms. Bordlemay is on here, too, and I
14 don't know if that's the same date. I know it was
15 towards my vacation time, which was the latter part of
16 November, but I don't know the exact date.
17 Q. I'm sorry, did you say Keri Waites is not on
18 here?
19 A. Keri Waites is on here.
20 Q. Oh, she is.
21 A. Yeah.
22 Q. Towards the end.
23 A. Yeah. It's alphabetical. Other than the
24 top four.
25 Q. Is it? Oh, by -- by Agent I or Agent II. By

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1 position.
2 A. Oh, yeah, by position, you're right.
3 Q. But Betty Dinelli is under Keri Waites. Who
4 is Betty Dinelli?
5 A. She's a senior administrative assistant.
6 Q. Is she a political appointee?
7 A. No.
8 Q. Is she a classified employee?
9 A. No.
10 Q. Is she the wife of Pete Dinelli?
11 A. Yes.
12 Q. How can you say that she's not a political
13 appointee, do you think?
14 A. She had to go through the interview process
15 like everyone else. Michael Padilla hired her.
16 Q. Your supervisors are exempt from FLSA, Fair
17 Labor Standards Act, overtime requirements, is that
18 correct?
19 A. Correct.
20 Q. And is that because they're categorized as
21 supervisors?
22 A. That is because their responsibilities are
23 those of a supervisor.
24 Q. Right. And are their responsibilities all the
25 same?

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1 A. Correct.
2 Q. And what are those responsibilities that make
3 them exempt from the Fair Labor Standards Act? If you
4 know.
5 MR. BERGMANN: Object to the form of the
6 question. She can answer if she knows.
7 A. I -- I don't know. That's -- I don't know
8 what the Fair Labor Standards Act has except for I know
9 that these people lead a team, coach them, provide
10 feedback, make hiring decisions, make recommendations
11 for dismissals, ensure that policies and procedures are
12 adhered to, provide guidance. But I don't know how many
13 of those are under FLSA. I just know that they're --
14 they're in a leadership role.
15 Q. Okay. When you say "make recommendations for
16 dismissals," you're aware of the names of the eight
17 Plaintiffs in this case?
18 A. Eight?
19 Q. Are you aware?
20 A. Could you review that list?
21 Q. Sure.
22 MR. BERGMANN: The caption has -- has
23 never been amended for the last three, so there are --
24 MR. LIVINGSTON: I understand the
25 confusion.

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1 MR. BERGMANN: Right. So it's a mixed
2 question, but for our purposes, I understand.
3 MR. LIVINGSTON: Okay.
4 Q. (By Mr. Livingston) Antoinette Gonzales,
5 Sarah Clover, Carol Austin, and Annette Mora are the
6 first four. James Pescetti was then added, and then
7 Yolanda Garcia, Nicole Bordlemay --
8 MS. FOSTER: Me, Nicole Foster.
9 Q. -- Nicole Foster.
10 MR. LIVINGSTON: Sorry, you're not
11 supposed to say anything.
12 MS. FOSTER: Sorry.
13 MR. LIVINGSTON: I appreciate the help.
14 MS. FOSTER: I apologize.
15 MR. BERGMANN: Your name would have come
16 up one way or another.
17 Q. (By Mr. Livingston) Those are the -- the
18 eight.
19 A. I'm aware of that.
20 Q. In some or all of those cases, did supervisors
21 recommend their dismissal?
22 A. Correct.
23 Q. Okay. And is it your testimony, then, that
24 you never make the decision on your own to tell a person
25 their services are no longer needed?

1 A. No, you said "in some," not all, of the cases.
2 Q. Okay.
3 A. So in some of the cases, the supervisors do
4 the disciplinary action, and when they come to the point
5 where they've done all that they -- all the steps to
6 ensure that they've coached them and given them what
7 they need, they then make the recommendation of what to
8 do with an agent that's not meeting performance
9 guidelines.
10 Q. Okay. When you say the supervisors make
11 hiring decisions --
12 A. Uh-huh.
13 Q. -- what -- what role do they have in hiring?
14 A. They actually are a part of a hiring team. We
15 do a two-tier hiring process, where supervisors and
16 operations managers do the first interview and make
17 recommendations to go to a second interview. And then
18 another panel is established for the second interview.
19 And then we get the feedback between the two before the
20 decisions are made.
21 Q. Okay. Now, when you say "We do this" or "We
22 do that," you mean "We used to do this or that before
23 the hiring freeze"?"
24 A. Whenever we hired, that's the practice we used
25 for hiring.

1 Q. When did you last hire?
2 A. I don't remember. You're taxing my memory.
3 Let me think. Maybe four months ago. Oh, I can check
4 here. Hold on. I can tell you from this.
5 MR. BERGMANN: Referring to Exhibit 7.
6 MR. LIVINGSTON: Okay.
7 A. It looks like 7/4/09 or thereabouts. And
8 that's based off of the report that you provided.
9 Q. Okay.
10 MR. BERGMANN: Why don't we take a couple
11 of minutes.
12 MR. LIVINGSTON: That's fine.
13 (A recess was taken from 10:37 a.m. to 10:42 a.m.)
14 Q. Okay. Take a look at Exhibit 1 again. Now,
15 I'm going to ask you some of the reasons why these
16 people were terminated.
17 A. Okay.
18 Q. And you don't have to tell me "Because their
19 services were no longer needed."
20 A. Okay.
21 Q. Do your best. If you don't remember, say you
22 don't remember. There's no -- You know, this isn't a
23 test to your memory.
24 A. Okay.
25 Q. What you remember, though. We need to know

1 your best recollection.
2 A. Okay.
3 Q. You didn't know anything about Michael
4 Padilla, and I assume since he was -- Well, I guess you
5 did know.
6 Sandra Griffie, what happened with her?
7 A. I don't know what her reasons were. I was
8 asked to come in and assist in that. I was taken by
9 surprise and have no idea, to date, what happened there.
10 Q. Okay. So you and Michael Padilla conducted
11 the dismissal --
12 A. Correct.
13 Q. -- but you just don't know why.
14 A. Right. I was asked five minutes before it
15 began to go in and be there.
16 Q. Okay. And it looks like Juan Penn was one of
17 the first ones to be terminated.
18 A. Yeah. I don't know why.
19 Q. And it says reason -- what was stated,
20 "unknown." "Who Conducted Dismissal, unknown."
21 A. Right.
22 Q. Does that mean that there would be no file on
23 Juan Penn or --
24 A. We did not have any file at ours -- our level
25 of what happened other than that he was terminated.

1 Q. Okay. And the next one on this list -- and I
2 think these are in order that they were hired,
3 actually -- is Sarah. Sarah Boyles who's now Sarah
4 Clover. And what is your recollection of the reason for
5 terminating her?
6 A. We had been working with Sarah about her
7 attendance. She had been given ample warning. She was
8 well aware of our pol- -- policies for attendance and
9 tardies and was on disci- -- I don't remember for a
10 fact, but I believe she was on disciplinary --
11 disciplinary action for her attendance incidents.
12 Q. Okay.
13 A. So it was due to failure to adhere to them.
14 Q. Okay. Jessie Carroll.
15 A. I don't even know that person, so -- We
16 couldn't find anything.
17 Q. Okay. That seems to be an unknown person.
18 A. Yeah.
19 Q. Now we come to Antoinette Gonzales.
20 A. Okay.
21 Q. Do you remember the reasons for her
22 termination?
23 A. There were actually several reasons. The --
24 the last situations that occurred were two employee
25 complaints about her that wrote me letters of fact of

1 ~~some behaviors that were being demonstrated by~~
2 ~~Antoinette that were less than professional and very~~
3 ~~concerning.~~
4 Q. Were those letters shown to her?
5 A. I don't recall.
6 Q. Okay. Did you actually tell her about those
7 letters?
8 A. I'd have to go back to my file, and I don't
9 recall.
10 Q. Okay. Did the Christmas tree episode have
11 anything to do with her termination?
12 A. No. The Christmas tree episode, as you're
13 referring to it, was that I'd asked for all things to be
14 represented -- all cultures to be represented, but the
15 tree was up. And that was way, way back. This was --
16 September was when she was terminated, and you're
17 talking about a December time frame. I don't even know
18 if it was the same year.
19 Q. Well, I think we're talking about
20 December 2007. Is that right?
21 A. Right. And she was terminated in September of
22 2008.
23 Q. And wasn't there a disciplinary action, an
24 investigation and disciplinary action, through the City
25 following that?

1 A. For?
2 Q. For some kind of alleged misconduct.
3 A. There was a filing with EEOC that she was
4 involved in, but not about a Christmas tree.
5 Q. Okay. Well, I'll ask you a little more about
6 that later.
7 Who's John Dooley?
8 A. He was one of our new hires. He was not there
9 very long. His was his ability to do the job.
10 Q. Okay. ~~And under Carroll Austin, you have~~
11 ~~"Resigned" and "Terminated."~~
12 A. Right.
13 Q. ~~Can you explain that?~~
14 A. ~~I can. Carroll had exhausted all of her~~
15 ~~benefit time, there were no hours left in any of her~~
16 ~~buckets -- and being unclassified, there's no~~
17 ~~Department 98, as it's referred to, a layoff~~
18 ~~department -- and was aware that if she took time and~~
19 ~~didn't have time in her buckets that she would no longer~~
20 ~~be employed. So we took it as a resignation because she~~
21 ~~chose not to come in.~~
22 Q. Well, isn't it true that she chose to have an
23 operation that she needed?
24 A. I don't know if she had the operation. That
25 was what the decision was. Her decision was to have the

1 operation. I don't know if she did.
2 Q. Okay. So did you concede that you told her
3 that she needed to make a choice between essentially
4 having the operation and --
5 A. I never said that.
6 Q. -- and resigning or being terminated?
7 A. I said that she had no eligible time in her
8 buckets and, according to rules and regulations, that
9 there was nothing I could do for her. She could resign
10 and return when she was ready to return to work, but
11 without anything in her buckets, I could not keep her on
12 the payroll. She'd exhausted all of her benefit
13 buckets, FMLA, ID. There was no time in any buckets
14 left, any of the buckets.
15 Q. Okay. How did you know that?
16 A. I talked to HR, and I talked to Payroll. I
17 ran reports just to make sure. I talked to Tanda
18 Meadors, my manager. I talked to Cindy Jaramillo,
19 talked to Legal. Looked at any options that were there,
20 and there weren't any.
21 Q. Okay. And when you say "HR," you mean Mary
22 Scott?
23 A. Mary Scott.
24 Q. Anyone else?
25 A. And I -- I may -- I have to look at my notes,

1 but I may have also talked to Pat.
2 Q. Pat Miller.
3 A. Correct.
4 Q. Okay. Now, Nicole Foster?
5 A. It was for multiple incidents of not complying
6 with procedures, all documented by supervisory.
7 Q. Troy Hays?
8 A. I don't know. That was before my time.
9 Q. Okay. Yolanda Garcia?
10 A. For not meeting quality standards after being
11 on disciplinary action.
12 Q. And Juan Gentry.
13 A. I don't know what his disciplinary action was
14 for, but he had gotten an addendum, meaning an extension
15 of trying to still correct it, because, like I said, the
16 last thing we want to do when there's a performance
17 issue is not give all the opportunities we can. But I
18 don't remember if his was attendance or measurements,
19 but it was within the key performance indicators.
20 Q. Manuel Aspietia?
21 A. I -- I don't know. That was before my time.
22 Q. Leon Castellano.
23 A. I don't have any idea.
24 Q. Alfred Otero.
25 A. This is just -- Without looking at record, I

1 believe he was on disciplinary action for the way he
2 handled calls, and he had a very bad call with a
3 citizen.
4 Q. Okay. And Adam Beserra.
5 A. For -- how do you put these -- for not telling
6 the truth. He lied.
7 Q. Was that something to do with a trip to
8 somewhere?
9 A. Uh-huh.
10 Q. And you being on a plane with him?
11 A. Uh-huh. Uh-huh.
12 Q. Did he admit he lied?
13 A. Pretty much. Without saying those words, yes.
14 He knew.
15 Q. He knew.
16 A. And I have documentation from him where he was
17 chatting me back and forth.
18 Q. Okay. Who was Patrick Tafoya? Was that
19 early?
20 A. It was early. He was just coming out of
21 training on to the phones and could not handle citizen
22 phone calls.
23 Q. And James Pescetti you already said was a
24 phone call.
25 A. He had performance issues all along, but the

1 final straw was the last call. And that recommendation
2 was made by his supervisor who observed the call.
3 Q. And Jacklyn Doerr? That's also pretty early,
4 I think.
5 A. Same thing. She was in training and was
6 telling people -- Most of the people that didn't make it
7 out of training were giving out false information or
8 misrepresenting the City, and after lots of coaching
9 still was doing the same thing.
10 Q. Okay. And Barbara Blaney?
11 A. Barbara Blaney resigned because she was out of
12 benefit time.
13 Q. Was that one of those situations where you
14 said, "You're out of benefit time. You could either
15 resign or be let go"?
16 A. She knew it. I didn't -- I didn't say it.
17 She knew it. She had been watching her buckets, and she
18 had been fairly ill.
19 Q. Okay. Ellen Montoya.
20 A. I don't remember that one.
21 Q. Okay. Nina Jackson.
22 A. Ninette Jackson had been on disciplinary
23 action for attendance.
24 Q. Okay. Kari Applegate.
25 A. I'd have to go back to her file. I know part

1 of it was misuse of company resources. Falsification of
2 reason for absence, I believe. I -- I would have to
3 look at that file, Paul.
4 Q. Okay.
5 A. I'm just -- I'm going off the top of my head
6 on that one.
7 Q. Okay. Now we come to the remarkable name.
8 Ozz Snoddy.
9 A. He's the nicest man, too. I want to think --
10 and, again, without looking at the files, I believe he
11 had an attendance problem, too, where we worked with
12 him, and he just could not get to work or be at work
13 when scheduled.
14 Q. Okay. And Renee Shelmadine.
15 A. She could not handle customers. Oh, that's
16 it.
17 Q. Now, at least two of the Plaintiffs had FMLA
18 issues. They had been injured on the job. Were you
19 aware of that?
20 A. I only knew of Annette Mora, because she -- it
21 was because she ran out of time and she still needed
22 surgery for her Workers' Comp. And -- Well, actually,
23 there were probably three, then, because Barbara ran out
24 of time, her FMLA time. She exhausted her FMLA. And
25 Caroll had exhausted -- I don't -- I -- I think there

1 was a Workers' Comp, but I don't -- I think those both
2 were exhausted. I don't know. I'd have to look at the
3 hours bank to see. But there was FMLA and Workers'
4 Comp, I believe, on that.
5 Q. Okay.
6 A. Again, the FMLA would have been exhausted.
7 Q. And Annette was an FMLA issue also?
8 A. I know she was -- I think -- and I -- I'm not
9 accurate. This is a guess on my part. But I think if
10 you're on Workers' Comp, it's still under the FMLA
11 umbrella, so there's time in buckets. Mary Scott was
12 explaining that to me. So she had exhausted all of
13 those at the point where she was no longer with the
14 City.
15 Q. So --
16 A. So I don't know if they run concurrent. I
17 would have to check what I have in the files.
18 Q. Okay. But even though the employee was
19 injured on the job and is under Workers' Comp, you still
20 would terminate the employment?
21 A. I didn't terminate it. She did not call us
22 back after her surgery to return, and she was out of
23 time.
24 Q. So you did not terminate Caroll.
25 A. Not --

1 Q. I mean, Ninette, I'm sorry.
 2 A. Yeah.
 3 Q. And isn't it true that Antoinette also had an
 4 injury?
 5 A. I did not think hers was Workers' Comp, but
 6 I -- I don't know without looking.
 7 Q. Did you have a -- a frequency of carpal tunnel
 8 injuries?
 9 A. No.
 10 Q. You weren't aware of that?
 11 A. No.
 12 MR. LIVINGSTON: Let me just have a
 13 minute here.
 14 Q. (By Mr. Livingston) Were you aware of the
 15 fact that 311 CCC employees were not allowed to be in
 16 the union?
 17 A. When you say "aware," yeah. I mean, I knew I
 18 wasn't part of a union.
 19 Q. Well, you as a management director -- or
 20 division director would not be part of the union.
 21 A. But I wasn't a division director my entire
 22 career.
 23 Q. They would if they were clerical-type
 24 employees or whatever. And are you aware whether 911
 25 operators are in a union?

1 MR. BERGMANN: Object. Well, I've got a
 2 standing objection on 911, so -- Sorry.
 3 MR. LIVINGSTON: You just can't resist.
 4 A. I don't -- I don't know. I think they are,
 5 but I don't know that for a fact.
 6 Q. Do you know of any reason why 311 operators
 7 should not be allowed to join a union?
 8 MR. BERGMANN: Object to the form of the
 9 question. She can answer if she knows.
 10 A. I don't.
 11 Q. Are you aware of an explanation that was given
 12 to some of the operators, contact agents, that the
 13 reason they were unclassified was because they were
 14 receiving higher wages and benefits than other City
 15 employees and that if they made them classified, they
 16 would lose those?
 17 A. I was told that by Michael Padilla.
 18 Q. Okay. Did he explain that any further than
 19 just saying what I just said?
 20 A. Huh-uh.
 21 Q. Did you ask him anything about --
 22 A. I'm sorry, I have to say no, I did not. I'm
 23 sorry?
 24 Q. Did you ask him about that?
 25 A. He explained to me that these were

1 nonclassified, nonunion positions. If they were union
 2 and classified, then we would have to fall upon the
 3 City's pay grade, which would not pay as much as what
 4 we're currently able to in an unclassified role. He
 5 even used my salary as an example.
 6 Q. Okay. Is it true that 911 operators were not
 7 allowed to apply for positions with 311?
 8 A. Anyone's allowed to apply for positions with
 9 311. The application system is out there for everyone.
 10 Q. So the answer is no, it's not true?
 11 A. No, it's not true.
 12 Q. Okay. Is it true that the benefits and pay
 13 for 311 operators are better than 911 operators?
 14 A. I don't know that. I don't know what the pay
 15 is of a 911 operator. But I was told that our operators
 16 are getting paid better than 911. I don't know that for
 17 a fact.
 18 Q. Okay.
 19 A. And I -- Benefits, I don't know how the
 20 benefits would differ.
 21 Q. Okay. Is Cindy Jaramillo the Human Resources
 22 representative who's in your department?
 23 A. Correct.
 24 Q. As Mr. Moser said, imbedded in your
 25 department.

1 A. She represents the DFAS.
 2 Q. Okay.
 3 A. And Mary Scott has been managing our FMLA.
 4 Q. Okay. There's a section of your procedural
 5 manual that refers to an employee satisfaction survey.
 6 A. Uh-huh.
 7 Q. Have those been conducted annually?
 8 A. No.
 9 Q. Why not?
 10 A. Because of not being able to take time off the
 11 phone.
 12 Q. Okay. Was there a baseline survey conducted
 13 in January of some year?
 14 A. There was a baseline survey, correct.
 15 Q. So I take it, if it says, "Employee
 16 satisfaction survey will be conducted -- will be
 17 conducted internally annually," the person who fails to
 18 follow that does not get disciplined.
 19 A. I was -- No, I did not get disciplined because
 20 I explained to my superiors, as well as Ted Shogry, that
 21 I needed help to do this. And he said -- Or not he.
 22 Somebody told me, "Well, you've got to do what you need
 23 to, to get through peak." So we've never been able to
 24 man- -- a couple of our deliverables, including quality
 25 summit and procedure summit, because of that.

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1 the same as what you gave to the --
2 MR. LIVINGSTON: Let me see what you have
3 as Exhibit 11.
4 MR. BERGMANN: So let's -- I mean, I made
5 copies of it, but I --
6 MR. LIVINGSTON: No, I think I have the
7 right ones. I just haven't --
8 MR. BERGMANN: All right. Let me take a
9 minute, because I'm getting some of these exhibits mixed
10 up.
11 MR. LIVINGSTON: Okay, yeah. I put --
12 MR. BERGMANN: Some are stapled together.
13 MR. LIVINGSTON: Right. Well, for the
14 record, what I intended was a two-page Exhibit 11, which
15 was the letter. And so if I may take the other two
16 pages off.
17 MR. BERGMANN: All right.
18 MR. LIVINGSTON: Is that okay?
19 MR. BERGMANN: All right. Change it so
20 we know what --
21 MR. LIVINGSTON: And if you could staple
22 that again.
23 THE WITNESS: Now the Exhibit 11 I have
24 has two pages.
25 MR. LIVINGSTON: Right. And that's what

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1 I intended. I'm sorry.
2 THE WITNESS: Okay.
3 Q. (By Mr. Livingston) On the second page, it
4 says "Human Resources Director." That was Pat Miller?
5 A. Yes.
6 Q. "Human Resources Administrator," who was that?
7 A. I don't know.
8 Q. "Human Resources Department" and "ADA
9 Coordinator," they all got copies of this.
10 A. Yeah. That's what this says.
11 Q. And as far as we can tell, none of them said,
12 "No, this is a mistake, you're not allowed to place an
13 unclassified employee in physical layoff."
14 A. Not as of October 10th.
15 Q. As of October 10th. Okay. And it took
16 until -- three-and-a-half months later to -- for someone
17 to realize that you needed to -- to terminate Annette
18 Mora, is that correct?
19 A. I never terminated Annette Mora. She ran out
20 of benefit time.
21 Q. Okay. Well, actually, the letter I have -- I
22 think I got it right this time.
23 (Exhibit 12 was marked for identification.)
24 MR. BERGMANN: This is 12.
25 MR. LIVINGSTON: It's 12. It's a one-

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1 page letter with three pages of attachment.
2 A. One page letter with three pages of
3 attachment?
4 Q. I think that's what it's supposed to be.
5 A. Yeah. Yup.
6 Q. Now, this is a letter that terminated Annette
7 Mora, is that correct?
8 A. From Mary Scott, yes.
9 Q. So Mary Scott did the termination?
10 A. Correct.
11 Q. And weren't you the only one who could
12 terminate a 311 CCC employee?
13 A. I -- Well, I -- that -- I'm not going to
14 answer that because I don't know that I'm the only one.
15 I think other people can do that as well.
16 Q. Okay. And you think Mary Scott had the
17 authority to do that?
18 A. I don't know that.
19 Q. Okay. And the fact that this letter says
20 "your services with the City of Albuquerque are no
21 longer needed," as of February 1st, "and your employment
22 will be terminated," that doesn't indicate that you
23 drafted that?
24 A. Nope, I did not.
25 Q. You did not. Okay. And copies of that went

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1 to you, to Tanda Meadors, Cindy Jaramillo, and someone
2 named Maria Stein, correct?
3 A. (Nods head.)
4 Q. Senior HR --
5 A. Not the admin we were looking for, huh?
6 Q. So does this -- I'm not sure how to phrase
7 this. Does this seem right to you, that you would put
8 someone on leave with -- on physical layoff and then,
9 three-and-a-half months later, terminate them --
10 MR. BERGMANN: Objection to the form of
11 the question. She can answer.
12 Q. -- because the City made a mistake?
13 A. I -- Rephrase that question for me again.
14 Q. Does that seem right to you?
15 A. I believe -- and I don't have fact, but I
16 believe that Mary was in contact with Annette, based on
17 the error, once it was discovered.
18 Q. You mean you think she discussed it with her.
19 A. I do.
20 Q. Well, isn't it true that you, as the
21 department director -- division director, were allowed
22 to approve leave without pay for employees?
23 A. Tanda Meadors was the only one allowed to
24 approve leave without pay. And depending on the amount
25 of time, it had to go above her.

1 A. Okay.
2 Q. Okay. So at the top of page 1 of 2 in
3 Exhibit 14, it says, "Carroll --" and this is clearly
4 from Mary Scott.
5 A. Uh-huh. It is.
6 Q. "-- Physical layoff could start the first day
7 you run out of FMLA."
8 A. Correct.
9 Q. So that's false. Mary was wrong about that.
10 A. Correct.
11 Q. "Approval of leave without pay is at the
12 director -- at the discretion of the Department
13 Director." Now, you're saying that's false also?
14 A. No. Approval of leave without pay is at the
15 discretion of the department director, meaning Tanda
16 Meadors.
17 Q. Right. But you had already told us that she
18 couldn't approve it for an unclassified employee.
19 A. It's up to her to approve it. It's not up to
20 us.
21 Q. But you told us that she said she couldn't
22 approve it for an unclassified employee.
23 A. Right.
24 Q. So Mary Scott obviously didn't know that
25 either. Is that right?

1 A. I don't --
2 MR. BERGMANN: Object to the form of the
3 question. She can answer.
4 A. I don't know that the time -- where the time
5 lines are, so yeah.
6 Q. "The information is not in the hand out, it's
7 in the Rules and Regs that you reviewed." So there's
8 somewhere in the rules and regs that says, at least
9 according to Mary Scott, approval of leave without pay
10 is at the discretion of the department director.
11 Correct?
12 A. That's how I'm reading it.
13 Q. Okay. And you're -- I think I asked you.
14 You're not aware of anything that says she can't approve
15 leave without pay.
16 A. There are reasons in rules and regs that leave
17 without pay are granted, and I don't know what those are
18 without looking them up.
19 Q. Okay. And is Carroll another one of these
20 employees who basically was terminated because she ran
21 out of time?
22 A. Carroll Austin took leave when she didn't have
23 any avail [sic]. She called in FMLA, and she did not
24 have any FMLA avail. So she kept calling in day after
25 day when she didn't have any, because she exhausted the

1 480 hours. Therefore, I called HR and Legal, and they
2 advised me to call her and let her know that her
3 services were no longer needed because she did not have
4 any leave.
5 Q. Okay. And when you talk about HR, is that
6 Mary Scott?
7 A. Mary Scott and Cindy Jaramillo.
8 Q. Okay. And when you talk about Legal, do you
9 again not remember who you talked to?
10 A. I'd have to -- I -- I'm sure I have it
11 somewhere, but I don't remember who it was.
12 Q. Okay. So the question from Carroll is, "is my
13 Department Director --" page 1.
14 A. Uh-huh.
15 Q. "-- is my Department Director," at the bottom
16 of the page, "still able to approve time off without pay
17 without going into a lay off status?" And it was
18 explained to you that -- oh, was it explained to you
19 that Carroll needed the surgery and that it was a medical
20 necessity? Did you understand that?
21 A. Carroll came to see me months before, about two
22 months before, asking how much time she had because she
23 was gonna need this surgery.
24 Q. Right.
25 A. And she was given her leave balance at that

1 time but used it up, and then came to me and said she
2 had to have the surgery now.
3 Q. Okay. But you were aware that, at least
4 according to her, she had to have the surgery.
5 A. Correct.
6 Q. Okay.
7 MR. BERGMANN: How much longer do you
8 think you're going to take? Because I need to take a
9 minute or two break, but I want to know timingwise.
10 MR. LIVINGSTON: What -- what time is it?
11 MR. BERGMANN: Well, it's about 11:35.
12 MR. LIVINGSTON: I probably got another
13 hour.
14 MR. BERGMANN: Well, then, we're going to
15 need to take some lunch break. So let me see if I can
16 facilitate doing one that's reasonably quick, and then
17 we'll come back, and then we can --
18 MR. LIVINGSTON: You know, actually, we
19 could continue this another one of the days we have. I
20 wouldn't mind doing that at all.
21 MR. BERGMANN: Well, the problem is, we
22 have -- we have this -- that hearing tomorrow at
23 three o'clock.
24 MR. LIVINGSTON: Right, but that's --
25 MR. BERGMANN: I don't know how long it's

1 going to last.
2 MR. LIVINGSTON: But, I mean, we have
3 time when we could get in something. I -- I -- I think
4 the hearing will probably last a half-hour or so.
5 MR. BERGMANN: Okay. Well --
6 MR. LIVINGSTON: But I do need to tell
7 you that I have not been able to confirm that Yolanda
8 Garcia is going to appear for her deposition. I have
9 not been able to contact her.
10 MR. BERGMANN: Well --
11 MR. LIVINGSTON: So that's one of the
12 slots. But we have other -- other, I think, hours, at
13 least, in terms of the way we do things.
14 MR. BERGMANN: Okay. Well, I -- I -- Why
15 don't -- Give us a couple of minutes, and we'll try to
16 chat a little bit.
17 MR. LIVINGSTON: Okay. And I'll try to
18 speed this up too.
19 (A recess was taken from 11:36 a.m. to 11:44 a.m.)
20 (Exhibit 15 was marked for identification.)
21 Q. Okay. Exhibit 15, can you identify it?
22 A. Yeah. This is documentation from an
23 operations manager by the name of Charles Chaten --
24 Cowen. It's a long day. Him.
25 Q. Did you say Charles Cowen?

1 A. Cowen. It's Cowen.
2 MR. BERGMANN: For the record, C-o-w-e-n.
3 THE WITNESS: There you go.
4 MR. LIVINGSTON: I think we got it.
5 Q. (By Mr. Livingston) And it's a meeting with
6 Caroll and you?
7 A. Caroll, Charles, and myself.
8 Q. On January 15th, 2008.
9 A. Correct.
10 Q. So that's about two years ago. And this
11 documents that you told Caroll that her request for
12 leave without pay was denied by the department director,
13 correct?
14 A. Correct.
15 Q. And you told Caroll that she would have to
16 make a decision regarding how she would proceed; that it
17 was a hundred percent Caroll's decision to make, but she
18 could either resign or what?
19 A. This is not my documentation.
20 Q. No. But what was -- what was your
21 understanding?
22 A. The decision was hers. She could decide to
23 stay and wait till she had enough leave balance or
24 resign because she was denied leave. So not being there
25 wasn't an option.

1 Q. Okay. And you received a letter right after
2 that asking for a reason why this was -- leave without
3 pay was being denied, is that correct? Do you remember
4 that?
5 A. I don't remember. I'd have to see it.
6 Q. Okay.
7 (Exhibit 16 was marked for identification.)
8 Q. Okay. And I believe that's Exhibit 16. So
9 starting at the bottom of the page, you told Caroll you
10 never suggested that she wait to have her surgery at a
11 later time, is that correct?
12 A. Uh-huh.
13 Q. But you did tell her that if she waited to
14 have her surgery at another -- a later time, that she
15 could still be employed.
16 A. She could wait, if that's what she wanted to
17 do, till her buckets were full. But I never suggested
18 she wait, tell her, "You need to wait." That's her
19 choice. I can't make people come to work every day.
20 That's a choice we all make when we get up.
21 Q. Well, but apparently you can -- Well, not you.
22 But -- but your department director, Tanda Meadors, can
23 deny her the ability to go and have her operation that
24 the doctors told her was needed -- was needed then and
25 keep her job.

1 A. I'm sorry?
2 Q. Would you agree that Ms. Meadows -- Meadors
3 denied her the opportunity to go and have the operation
4 and keep the job?
5 A. No. Caroll exhausted her buckets. There were
6 no benefits available to her at that time. That was a
7 decision she needed to make. The fact that Tanda did
8 not approve her time off is because it did not qualify,
9 according to whatever policy she's going to use. I
10 don't know that it had an end date. I know it had a
11 begin date. And I would have to look at the request.
12 But it was denied by Tanda.
13 Q. Okay. And you did receive this letter,
14 e-mail, whatever, Exhibit 16, saying, "I want to keep my
15 job and [I] will not be resigning like you suggested....
16 After speaking to Human Rights they [told me to] address
17 this issue with Human Resources. I do still need in
18 writing why my request for time off was denied."
19 A. (Nods head.)
20 Q. Did you tell Tanda -- Tanda Meadors that she
21 was requesting in writing a reason?
22 A. This went to Tanda, so she knew.
23 Q. Okay. So she knew.
24 A. And so did Cindy Jaramillo.
25 Q. And was there any response to that?

1 A. I -- I don't know if Caroll got anything from
2 them.
3 Q. Okay. Moving on to Antoinette Gonzales. And
4 I think Antoinette's probably has more paperwork than
5 you have. But I'm not going to use all of it.
6 First of all, were you aware that
7 Antoinette Gonzales was on FMLA leave?
8 A. She had FMLA in her file. When you say on
9 leave, it was intermittent.
10 Q. She had been certified for FMLA.
11 A. For intermittent.
12 MR. BERGMANN: Intermittent FMLA.
13 What is this? 17.
14 (Exhibit 17 was marked for identification.)
15 Q. Neuralgia?
16 A. I can't read it.
17 Q. Fibromyalgic and something arthritis or
18 something. If that's what you're talking about.
19 A. I can't read anything from Bullet down -- 3
20 down other than the circle on Number 4. I can see like
21 a "g-i-a" and a "w." But I -- I don't know what it
22 says. I don't get these. These go to the FMLA
23 coordinator.
24 Q. Okay.
25 A. So --

1 Q. And who was that for your department?
2 A. That would be -- was Cindy Jaramillo, and
3 currently is Mary Scott.
4 Q. Okay. In any event, you were aware that
5 Antoinette Gonzales was on leave -- had been certified
6 for intermittent FMLA.
7 A. She had been for a while.
8 MR. BERGMANN: Do you have a legible copy
9 of this document somewhere?
10 MR. LIVINGSTON: No. These are the ones,
11 I think, I got from you. But I'm not sure. Maybe not.
12 MR. BERGMANN: No, I don't think --
13 MR. LIVINGSTON: No?
14 MR. BERGMANN: I don't think I have FMLA
15 leave -- We would have sent --
16 MR. LIVINGSTON: Okay. No, that --
17 that's all I have.
18 MR. BERGMANN: All right.
19 MR. LIVINGSTON: I've got a previous one
20 which has the same information. Perhaps I should
21 just -- Can we put those two together?
22 MR. BERGMANN: I don't have a problem if
23 you just want to just staple them together.
24 MR. LIVINGSTON: We'll staple them
25 together. Here's the previous one. That's more

1 legible.
2 (A discussion was held off the record.)
3 MR. BERGMANN: All right. Fibromyalgia,
4 arthritis. I can read that.
5 (Exhibit 18 was marked for identification.)
6 MR. LIVINGSTON: Are we up to 18 now?
7 THE WITNESS: Yup.
8 MR. BERGMANN: 18, right.
9 Q. (By Mr. Livingston) Okay. Would you identify
10 Exhibit 18?
11 A. Uh-huh. Exhibit 18 is a letter that I give
12 out at the holidays to thank everyone for their
13 dedication and commitment to the success of the team.
14 They're issued around the holidays. Part of the reason
15 is because, when City Hall gets to go home at noon for
16 holidays and we can't because we're considered essential
17 personnel, this gives people the flexibility to take
18 some time off during the year.
19 Q. H'm. So you issued this around the holidays?
20 You mean -- excuse the expression -- Christmastime?
21 A. It would have been issued in probably December
22 of 2007, is my guess, without going back to my files.
23 Q. Okay. But it's only good for the period
24 August 15th, 2008, to November 15th, 2008.
25 A. Right, because there are pers- -- there are

1 parts of the year where we're not able to grant time off
2 due to volume. And supervisors got more than one
3 letter. So this is an example of only one.
4 Q. Okay. And there's no date on that, is that
5 correct?
6 A. This would be when it expires so that they
7 could take -- They got actually a total of two letters,
8 so they could take four hours in one part of the year
9 where we weren't busy and four hours in another part of
10 the year when -- in the days when we weren't busy,
11 because it's no longer a true statement. We're busy all
12 the time.
13 Q. Okay. And you thank her for her dedication
14 and commitment. "unsurpassed, superb and incredible
15 hard work...has not gone unnoticed."
16 A. This is a form letter that went out to
17 everyone in the team, including everyone behind you,
18 with their names put in it.
19 Q. Okay. So do -- does that mean you didn't mean
20 it?
21 A. I meant the team did an outstanding job.
22 Q. Okay. So they all got four hours paid time
23 off.
24 A. The supervisors got a different amount than
25 the agents because the supervisors were required to work

1 a lot more holidays without compensation.
2 Q. Okay.
3 (Exhibit 19 was marked for identification.)
4 Q. Would you identify Exhibit 19?
5 A. Yes.
6 MR. BERGMANN: Exhibit 19.
7 A. It is a letter that was given to Antoinette
8 from Tanda Meadors, handed to her by Cindy Jaramillo,
9 with Dinah Varela present.
10 Q. Okay. And it says, "Effective immediately
11 your services with the City of Albuquerque are no longer
12 needed." And it's dated September 12th, 2008, correct?
13 A. Correct.
14 Q. So before she could use her four hours, she
15 was fired, correct?
16 A. Those are issued in December of the prior
17 year, so December of --
18 Q. Of the prior year.
19 A. They were issued December of 2007 to be used
20 during 2008.
21 Q. Okay. Is what you described before about two
22 complaints -- is that why Tanda Meadors fired Antoinette
23 Gonzales?
24 A. That was the final situation that caused it.
25 There were several other questionable situations.

1 Q. Okay. Well, why didn't you do it -- do this?
2 Why didn't the letter come from you?
3 A. Tanda Meadors and Cindy Jaramillo thought it
4 best that they go ahead, because I had raised the
5 concerns to Tanda.
6 Q. As far as you know, Antoinette Gonzales was
7 given no other explanation other than this?
8 A. That's all -- Yeah, I wasn't in the room. I
9 know Dinah Varela was in the room with Cindy. Tanda was
10 not present.
11 Q. So if, in fact, the allegations of what she
12 did that the employees raised were not true, she had
13 no -- no opportunity to confront them.
14 A. That was not the only situation.
15 Q. Okay. Well, tell me about the others.
16 A. There were other situations where she was
17 given directive not to do something, and she chose to do
18 it anyhow, which put the City at jeopardy. One had to
19 do with a Christmas party, which was fine except for
20 that we had said we couldn't have it at the center. We
21 couldn't take donations because the City is not allowed
22 to take donations from businesses. And she continued.
23 And we had gift cards from Wal-Mart that were going to
24 be used, and that was -- There was a long discussion
25 with her. There was a discussion with different parties

1 about how unethical that was. I asked her not to have
2 the event. She could not use 311 nor the City of
3 Albuquerque in that event.
4 Because she chose to have it, and she
5 asked me if she could have it along with some people if
6 they were volunteering. Because I volunteer. I said,
7 "Well, of course. If you're volunteering on your own
8 time, what you do on your own time volunteeringwise is
9 fine."
10 But I found out that the room was reserved
11 under the City of Albuquerque 311, where it was
12 happening. Everyone thought it was 311. And a thank
13 you letter was sent to the mayor on behalf of the City
14 of Albuquerque and 311 for having the event.
15 Q. Was this perhaps the incident that led to an
16 investigation that David Palmer and Angela Baldwin --
17 A. I don't believe that that's the situation.
18 Q. -- did? But you're not -- you don't know what
19 the other situation was?
20 A. The on- -- the only situation I know of, one
21 was -- had to do with an employee -- two employees in
22 the workplace, and Antoinette was involved in that. I
23 don't know of anything else about any other allegations
24 through Angela or David.
25 Q. Okay. What was what you're referring to?

1 A. There was a situation where there was an
2 investigation done because I had asked a supervisor to
3 make sure that people were on task, which is what their
4 job is. And I was walking through the floor. The
5 supervisor I approached was J. Michael Barnes. The next
6 thing I know, Antoinette was in my office. Don't know
7 how she got involved. And she was telling me that these
8 two people weren't doing anything wrong; that one of
9 them was conducting training.
10 And I said, "Great."
11 Then the next thing I know, there's
12 allegations about my -- I don't remember what the exact
13 charges were or allegations, but there were no findings
14 in the end of the investigation that had to do with -- I
15 don't even know how they worded it, but there's a -- a
16 record on file.
17 Q. Okay.
18 A. Sorry, I'm so warm.
19 Q. That's okay.
20 (A discussion was held off the record.)
21 (Exhibit 20 was marked for identification.)
22 A. Yup.
23 Q. That's the letter from you?
24 A. Uh-huh.
25 Q. And that's Exhibit 20?

1 supervisor documented.
 2 Q. Well, how do you know that? I mean, you know
 3 that she documented it, but how do you know what --
 4 A. I don't. I wasn't there. You're right,
 5 Mr. Livingston, I wouldn't be able -- other than the
 6 documentation. Just as, though, how does Sarah know
 7 what was said. I mean, unless you're right there in the
 8 room, it's whatever everybody says was said.
 9 Q. Right. And so you have heard Sarah say that
 10 she was told to go home, haven't you?
 11 A. Sarah said her understanding was that it was
 12 okay for her to go home.
 13 Q. Well, okay. I guess we can go back and look
 14 at --
 15 A. But that's what I'm saying. Neither one of us
 16 were there. I would not disagree with that.
 17 Q. Right. But why, when the City needs 311
 18 operators, why would you fire Sarah for an issue like
 19 that, like going home or not going home?
 20 A. Because this wasn't the only incident. Sarah
 21 had an attendance issue that had been addressed for a
 22 period of time that she had tried to overcome. She
 23 herself knew on the night that she didn't feel well that
 24 she was on a final. And that's why she did approach the
 25 SOD. Sarah had an ongoing attendance problem.

1 Q. Okay. I understand that. But if you have an
 2 employee and the employee, he or she, has an attendance
 3 problem, isn't the City better off having that employee
 4 and dealing with it rather than having a vacant
 5 position?
 6 A. Not necessarily, if you can't rely on them to
 7 be there. You have to have some standards of
 8 expectation for everyone. So when somebody's not there,
 9 your citizens are being impacted. It's critical. It's
 10 not -- it's -- There's not anyone else to answer the
 11 call when one less person is there.
 12 Q. Okay. So you can't rely on them being there,
 13 so you fire them, and then you know they're not going to
 14 be there?
 15 A. Exactly. Then you know what you're dealing
 16 with.
 17 Q. You know there's no one there, and the
 18 citizens don't have anyone to rely on at all.
 19 A. No. You -- you hope that you can replace that
 20 vacancy.
 21 Q. But wasn't --
 22 A. And get ---
 23 Q. -- Sarah basically a good employee when she
 24 was at work?
 25 A. Sarah was a great employee when she was at

1 work.
 2 Q. So first there was a decision made that Sarah
 3 could not be a part-time employee.
 4 A. That was actually rules and regs.
 5 Q. Well, but someone decided after -- After
 6 saying she could be, someone decided she couldn't be.
 7 And then someone decided -- and I'll fill in the someone
 8 in a minute --
 9 A. Okay.
 10 Q. -- to fire her rather than address her
 11 attendance issues, which is done --
 12 A. (Nods head.)
 13 Q. I see you nodding your head. I haven't asked
 14 you the question yet.
 15 A. No, I'm listening. That's how I acknowledge
 16 I'm listening.
 17 Q. Okay. But -- but -- Okay. Let me ask you,
 18 all City departments and divisions have attendance
 19 problems, correct?
 20 A. I don't know about the other departments and
 21 divisions.
 22 Q. Well --
 23 A. I can make that assumption.
 24 Q. Okay. I mean, you can assume that Transit
 25 has -- has attendance problems, and they have employees

1 who abuse sick leave, and they have employees who do
 2 strange things when they say they're sick and they go on
 3 vacations and things like that, and they deal with it.
 4 But in your view, is it fair to say you're not patient
 5 because you feel the urgency of dealing with it right
 6 away?
 7 MR. BERGMANN: Object to the form of the
 8 question. She can answer.
 9 A. That is not so. If you look at the
 10 disciplinary action steps, that went on for many, many,
 11 many months. So the actions that Sarah demonstrated,
 12 she was well aware -- We tried to work with her to let
 13 her know we did not want to lose her. The ultimate
 14 decision to come to work is hers, not ours.
 15 Q. Okay. But my understanding is you never
 16 suspend an employee. Is that correct?
 17 A. Not that I'm aware of. Not that I've ever
 18 done, no.
 19 Q. And you never demote an employee.
 20 A. Not that I have done, no.
 21 Q. Well, why not? Those are part of progressive
 22 discipline in other departments, aren't they?
 23 A. If we have guidelines established and we give
 24 you more than one amp- -- or many ample opportunities to
 25 correct those deficits and you choose not to, that's

1 your decision as an employee, not mine. If you're well
2 aware of what's expected of you -- We work to coach you
3 to performance or whatever the deficit is, continue to
4 coach up, tell you how concerned we are. The ultimate
5 decision lays with the employee. It wasn't a one-time
6 you're sick, you're gone. It -- That was not the case.
7 Q. Well, but there's no record of any other
8 disciplinary action.
9 A. There was disciplinary action.
10 Q. What is the disciplinary action?
11 A. It was for attendance. She was on a final
12 corrective for --
13 Q. No. But what -- what was the disciplinary
14 action? If you don't suspend and you don't demote, what
15 was the disciplinary action?
16 A. It started with a warning, letting them know
17 that they're in deficit of where they need to be.
18 They're given 30, 60, 90 days, depending on the length
19 of time where they're at. If they have another
20 occurrence, it moves to the next level of disciplinary
21 action. If they still are in deficit after the time
22 period specified, it goes to a -- a written. So there's
23 the third warning. And at -- it can take up to a year,
24 a year and a half. And then if, after the written
25 warning, you have an issue again, you're on a final

1 warning. And from the final warning, once you're on the
2 final warning, it may lead to dismissal. In this case,
3 it did.
4 Q. Okay. Well, why don't you give five-day and
5 ten-day suspensions like they do in other departments?
6 No reason?
7 A. There's -- It doesn't make good business
8 sense.
9 Q. Good business sense. Could you explain that?
10 A. If somebody's not able to meet your
11 specifications or your guidelines, and when they're
12 hired they're all spelled out to them and they're given
13 coaching after coaching, we have a habit here that is up
14 to the individual to break. What -- what good will a
15 suspension do? They'll come back and still have the
16 same problem.
17 Q. So would you suggest that the City of
18 Albuquerque should deal with all its employees by just
19 terminating them without any other disciplinary action?
20 MR. BERGMANN: Object to the form of the
21 question. She can answer.
22 A. It's not my place to make that decision.
23 Q. But you do think it would be a good idea.
24 A. It's not my place to make that decision.
25 Q. Well, I'm not asking you to make a decision.

1 I'm --
2 A. I don't know that it's a good idea. I know
3 what's good for my business and how I operate my
4 business. I can't speak for Solid Waste or any other
5 division because I don't know what it takes to operate
6 them. I know that ours is a matter of numbers. You get
7 so many calls in, and if you don't have the people
8 staffed, what happens to your service level.
9 Q. Okay. Well, what I understand is that there
10 are increasing numbers of people being placed on hold
11 for longer and longer periods. Is that true?
12 A. What do you mean, "placed on hold"?
13 Q. Well, when they call in, citizens call in and
14 they're put on hold.
15 A. We don't put people automatically on hold.
16 Q. Are people placed on hold ever?
17 A. Well, if I'm transferring a caller to
18 somebody, it automatically places them on hold, or while
19 I'm researching something. But we don't answer the
20 phone and place people on hold.
21 Q. I guess what I'm asking you is -- Okay. Do
22 you place them in a queue?
23 A. The calls sit in a queue. The average -- The
24 service level in a call center is based on how many
25 calls are answered within your specified time frame. In

1 our case, it is -- any calls answered in 30 seconds or
2 less meets the criteria. Anything outside of that
3 drives from a hundred percent down. So the less people
4 you have as your call volume increases, the lower your
5 service level is, meaning more calls are answered
6 outside of your 30-second parameter.
7 Q. Okay. So the 30 seconds isn't waiting time in
8 a queue?
9 A. Yeah, you can wait up to 30 seconds. But
10 that's never changed. You could wait longer than
11 30 seconds. A lot of times, people get answered right
12 away. It varies on the time of day and day of week and
13 conditions in the city.
14 Q. Okay. But once the person is ans- -- the call
15 is answered, then it has to be dealt with immediately?
16 A. Correct. We don't put people on hold.
17 Q. You don't put people on hold.
18 A. I mean, we will if we're researching an answer
19 or getting them transferred. But we don't say, "Can you
20 hold, please."
21 Q. Okay. So how is the service right now?
22 A. Well, we're in our lowest time of the year.
23 There's only like three weeks, maybe four, that we're at
24 the very lowest, and this is it. So right now we're
25 servicing at about a 97 percent service level. Industry

1 standard is 80 percent. So we've always been well
2 above, and we'll strive to always continue well above.
3 Q. Is there a limit to how many more people you
4 can afford to lose and still maintain the service to the
5 public, adequate service to the public?
6 A. Well, there always is in any business. In
7 this particular case, we're hoping to fill vacancies as
8 we lose people.
9 Q. Okay. Well, how do you hope to do that with a
10 \$50 million deficit and a freeze on hiring?
11 MR. BERGMANN: Objection, form of the
12 question. She can answer.
13 A. Repeat that for me.
14 Q. How do you hope to hire people and fill vacant
15 positions with a \$50 million deficit and a freeze on
16 hiring?
17 A. That's up to the administration to decide
18 which vacancies will be filled within the City.
19 Q. Have they shown any sign of filling your
20 vacancies?
21 A. I'm still working with my director, Lou
22 Hoffman.
23 Q. Okay. Is Tanda Meadors still there?
24 A. She was replaced by Lou Hoffman.
25 Q. Okay. That's what I wondered.

1 A. Yeah.
2 Q. And Pat Miller was replaced by Gene Moser.
3 A. Right.
4 Q. Have there been any other replacements at --
5 that affect the 311 call center?
6 A. Gosh, I don't even think of it in those terms.
7 The person that we take media calls to is now Chris
8 Ramirez, so that's changed. And T.J. Wilhelm.
9 Q. Right.
10 A. The CAO has changed because, on occasion, I
11 have to alert the CAO.
12 Q. Okay.
13 A. The fire chief has changed, and on occasion I
14 have to alert him. I may be missing some. Those are
15 the ones off the top of my head.
16 Q. Okay. Well, you just reminded me of something
17 interesting. Is there an operator, a contact center
18 employee, who hung up on -- allegedly hung up on the
19 CAO? Annette Adams?
20 A. No. Did not give him the right information.
21 Did not hang up on him. Yeah, he --
22 Q. Okay. So there's never been a hang-up on --
23 A. Not a hang-up, no. No, they wouldn't --
24 Q. They wouldn't still be there.
25 A. They wouldn't be there.

1 Q. Okay.
2 MR. LIVINGSTON: We have, I think,
3 requested to look at the files of the Plaintiffs in this
4 case, and I don't think we've done that yet -- I know we
5 haven't done that yet. So, Ed -- Ed, I would request
6 that we get to do that --
7 MR. BERGMANN: Okay.
8 MR. LIVINGSTON: -- based on this
9 testimony.
10 MR. BERGMANN: And that's fine. That's
11 fine. We just need --
12 MR. LIVINGSTON: Mostly my fault I
13 haven't --
14 MR. BERGMANN: I understand. We'll just
15 find a convenient time to do it, and that will be it.
16 MR. LIVINGSTON: All right.
17 MR. BERGMANN: We'll -- we'll get them
18 together.
19 Q. (By Mr. Livingston) At the time that Sarah
20 was terminated, were you aware that she did have sick
21 time in what you've called the bucket, vacation time
22 left?
23 A. I didn't check it.
24 Q. It didn't matter?
25 A. No, because this was actually an infraction on

1 a final warning.
2 Q. Okay. Well, correct me if I'm wrong, but
3 isn't it true that there are numerous employees who have
4 final warnings?
5 A. Yes.
6 Q. And that numerous addendums, I guess it's
7 called --
8 A. At this point, there are addendums. Yeah, we
9 have done them on an exception basis, not on a regular
10 basis.
11 Q. Okay.
12 A. For instance, if a person is not meeting what
13 we call ACW, after call work, and they've made
14 improvement but they're a second or two away, we would
15 go ahead and do an addendum to give them some additional
16 time to rectify that situation.
17 Q. Okay. By "we," is -- is it you making the
18 decisions, or is it a team --
19 A. It's a team. The supervisors talk to their
20 operations managers, and then they come to bat for their
21 agents, and they bring all the data to show why, you
22 know, although there's an infraction to the final, why
23 it is that we should give them additional time. What
24 progress they've made, you know, what commitments
25 they've made to keep. So that we're working -- Because,

1 effort, because I know her nature was not what her
2 outburst could show sometimes. And, you know, I'm a
3 human being too. I know everybody has a moment. But
4 this was not the first call. It was one of the -- the
5 more serious situations she'd had.

6 Q. Okay. James Pescetti. Is that how you say
7 it?

8 A. Yeah.

9 Q. He apparently lost his brother, died, and had
10 all kinds of issues. But he was covered under FMLA, as
11 far as you know?

12 A. I believe he may have exhausted all his hours
13 off and on, because when all of that was going on, he
14 also lost another family member, immediate family
15 member, and that's where I went to see if we could get
16 some administrative leave, because his -- everything was
17 exhausted, and he had to settle something. I don't
18 remember exactly which one it was, but he lost two
19 family members -- immediate family members very close.

20 Q. Okay.

21 A. Yeah.

22 Q. And he -- at least according to his account,
23 he was told that he should -- apparently a doctor told
24 him to go ahead and submit certification for another
25 year of FMLA. Did you know about that?

1 A. Antoinette Gonzales.

2 Q. Okay. And he -- he said that he wanted --
3 when he talked to you, he said he wanted to know what
4 the reasons were, and you would just tell him, "My [sic]
5 services are no longer needed," is that true?

6 A. That's correct.

7 Q. Can you explain why you wouldn't tell him what
8 you just told us?

9 A. I was advised that the City's position is,
10 when somebody leaves, we advise them their services are
11 no longer needed.

12 Q. If they're unclassified.

13 A. I don't know what they do with classified,
14 but --

15 Q. Oh.

16 A. Yeah, for me, that's -- And from day one at
17 311, it's my understanding that's what they've been
18 advised. I wasn't involved in them, but that's what I'd
19 been told.

20 Q. Yolanda Garcia. What happened with her?

21 A. Yolanda Garcia was struggling to meet our
22 quality guidelines.

23 Q. Right.

24 A. And month over month, she struggled. We kept
25 coaching with her, sitting down with her. Her

1 A. I -- He very well could have. I -- Like I
2 said, I don't see the paperwork. I only see once it
3 approves -- what it -- once it's approved by the HR.

4 Q. Okay. So did you or didn't you know, or do
5 you just not remember --

6 A. I don't remember if his was exhausted or not.

7 Q. -- that he had been approved to start FMLA
8 again on May 22nd, 2008?

9 A. I don't know that for a fact. I'd have to go
10 back to my files. I'm sorry.

11 Q. Okay. Well, my -- my understanding is that on
12 May 16th, just four -- six days before that, less than a
13 week, he was called into your office and told his
14 services were no longer needed.

15 A. His supervisor had listened to a call and
16 reported that this was a horrible call and we needed to
17 fire him. I asked that supervisor to please document
18 what happened, because I didn't hear the call, and sat
19 and talked to the supervisor, brought my other managers
20 in and discussed the whole situation, because the call
21 was that bad. And, again, I didn't hear it, so I'm not
22 going to just blindly say "Okay, fine." And I had the
23 documentation from the supervisor, and so he was
24 dismissed for the way he behaved on that call.

25 Q. Okay. Who was the supervisor?

1 supervisor talked to her, I talked to her, operation
2 managers talked to her, to try and give her tips of how
3 to keep her quality where it was in meeting guidelines.

4 I sat down and had a heart to heart with
5 her and asked her if everything was okay -- because this
6 just wasn't her performance until recently, like -- like
7 the last period was real bad; I don't remember if it was
8 six, seven months -- and told her I really didn't want
9 her to lose her job. She does a good job, but recently
10 there's been a -- a problem.

11 So she said she was gonna try. I mean, we
12 sat down, she said she was gonna do all she could. But
13 we continued to get what we call zero calls or failing
14 calls scored on her. And she got the feedback within
15 24 hours, because that's what we do if we can't do it
16 immediately. And then she was up for dismissal, and I
17 wanted her to know. I saw the effort she was making
18 because her scores improved. They still weren't where
19 they needed to be, but they improved. I believe we put
20 an addendum in for her, because I want people to know,
21 "You are showing an effort."

22 And then she -- she -- her score went down
23 or didn't meet again. We were ready to term her, and
24 Richard Benison, who is the ADA coordinator, had said
25 that Yolanda had come to see him and would I consider