

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF NEW MEXICO  
3                   Case No. 1:09-CV-00520-JB-RLP

4 ANTOINETTE GONZALES, CAROLL AUSTIN, SARAH CLOVER, and  
5 ANNETTE MORA, and A CLASS OF SIMILARLY SITUATED CITY  
6 EMPLOYEES,

7                   Plaintiffs,

8                   vs.

9 THE CITY OF ALBUQUERQUE, ED ADAMS, Chief  
10 Administrative Officer, and ESTHER TENENBAUM,  
11 Division Manager, in their individual and official  
12 capacities,

13                   Defendants.

14                   DEPOSITION OF KERI WAITES

15                   Tuesday, May 4th, 2010  
16                   3:34 p.m.

17                   CITY ATTORNEY'S OFFICE  
18                   One Civic Plaza, Northwest, Fourth Floor  
19                   Albuquerque, New Mexico 87102

20                   PURSUANT TO THE FEDERAL RULES OF CIVIL  
21                   PROCEDURE, this deposition was:

22                   TAKEN BY:           MR. MICHAEL I. GARCIA  
23                   ATTORNEY FOR THE DEFENDANTS

24                   REPORTED BY:       MICHELE M. TRUJILLO, CCR No. 226  
25                   RUSSIN WILLIAMS REPORTING  
                  1608 Fifth Street, Northwest  
                  Albuquerque, New Mexico 87102

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1 Q. So your understanding was, generally, that  
2 you probably were getting paid more, working for the  
3 City at 311, than you might have been working in an  
4 other --  
5 A. Basically, yeah. The reason we were  
6 getting this paid is because we're nonunion. If we  
7 were union, it would be a totally different story.  
8 So that's where the difference comes between us and  
9 other City employees.  
10 Q. Had you ever worked for the City before?  
11 A. No, sir.  
12 Q. And the reason I ask --  
13 A. Well, I did Parks and Rec when I was  
14 younger.  
15 Q. Oh, yeah?  
16 A. When I was probably about 16, 17.  
17 Q. Okay.  
18 A. But that's it.  
19 Q. The reason I ask is, I have a document here  
20 that says that you were a rehire.  
21 MR. GARCIA: I could show you it, Paul.  
22 MR. LIVINGSTON: Okay.  
23 MR. GARCIA: It was in that same pile, but  
24 it's kind of hard to find. I'll hand it to you.  
25 MR. LIVINGSTON: Okay. That's probably

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1 another case. Temporary employees?  
2 MR. GARCIA: Yeah, let's stay on topic  
3 here.  
4 MR. LIVINGSTON: Okay.  
5 Rehire, yeah.  
6 Q. So that explains that.  
7 A. Oh.  
8 Q. I did have a question about that. I don't  
9 think we need to make that an exhibit, though.  
10 Here's just a -- we can make this  
11 Exhibit 3. It looks like it was your P2. It looks  
12 like you were hired on August 7th of '07, and we  
13 just -- it's not a huge deal, but we can just use  
14 that for an exhibit to keep track of things.  
15 MR. GARCIA: Any objection, Paul?  
16 MR. LIVINGSTON: What is that one? P2.  
17 MR. GARCIA: It shows the date of hire.  
18 MR. LIVINGSTON: Okay. No, no objection.  
19 MR. GARCIA: Okay.  
20 (Waites Exhibit 3 marked.)  
21 Q. Can I see that one more time?  
22 A. Uh-huh.  
23 Q. That also has the Job Codes and the UN and  
24 all that on there, right up above that first line; is  
25 that true?

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1 A. Yes.  
2 Q. Oh, yeah, and I meant to show you -- I did  
3 mean to ask you about that bullet there at the -- the  
4 second bullet down.  
5 A. Uh-huh.  
6 Q. It says, "Unclassified"?  
7 A. Yes.  
8 Q. Okay. Yeah.  
9 And you signed it, right?  
10 A. Yes, I did.  
11 MR. LIVINGSTON: I'm still looking for that  
12 one.  
13 MR. GARCIA: In that pile?  
14 MR. LIVINGSTON: Is that this one?  
15 MR. GARCIA: Yeah, that's it.  
16 MR. LIVINGSTON: Got it.  
17 MR. GARCIA: That's going to be 3.  
18 MR. LIVINGSTON: Okay.  
19 MR. GARCIA: I've got another exhibit. I  
20 guess we'll call this one 4.  
21 It's the very top one, Paul.  
22 MR. LIVINGSTON: Okay.  
23 Q. It looks like it's the termination  
24 information. I don't know if you've ever seen that  
25 before. It may just be an internal document.

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1 A. I've seen this before.  
2 Q. Okay.  
3 MR. GARCIA: Any objection, Paul?  
4 MR. LIVINGSTON: I guess I'm curious. What  
5 happens if I do have an objection?  
6 MR. GARCIA: I guess we fight about it  
7 later.  
8 MR. LIVINGSTON: Okay.  
9 MR. GARCIA: I can still ask her questions  
10 about it.  
11 MR. LIVINGSTON: Okay. No objection.  
12 MR. GARCIA: So we can make this one 4,  
13 Michele.  
14 (Waites Exhibit 4 marked.)  
15 Q. And I guess, just to make it official,  
16 here's the letter dated January 5th from Esther  
17 Tenenbaum to you.  
18 MR. GARCIA: Let's see. If we could call  
19 this Exhibit 5.  
20 MR. LIVINGSTON: Okay.  
21 MR. GARCIA: I think you've got it there,  
22 Paul.  
23 (Waites Exhibit 5 marked.)  
24 Q. I'm guessing you've seen this, Ms. Waites?  
25 A. Yes, I have it.

1 Q. I'm going to switch gears, just for a  
2 little bit. You were never exempt in this case under  
3 the FLSA? If you know what that means, you could say  
4 yes or no.  
5 A. I do not know what it means.  
6 Q. Okay. You're not claiming overtime?  
7 A. Right, right.  
8 Q. And you're not claiming anything under the  
9 Family Medical Leave Act, either, are you?  
10 A. No.  
11 Q. Okay. Because those are other claims in  
12 the case, and I just need to rule those out.  
13 A. No.  
14 Q. Who was your supervisor when you were  
15 at 311?  
16 A. It periodically changed, but when I left,  
17 Celia Loveland --  
18 Q. Okay.  
19 A. I think that's her last name.  
20 Q. Okay.  
21 A. -- was my supervisor.  
22 Q. Was Antoinette Gonzales ever a supervisor  
23 of yours?  
24 A. In the beginning, yes, she was.  
25 Q. Did she -- what was your relationship with

1 her?  
2 A. She's a great woman. She's very outgoing.  
3 She's probably one of the only ones that helped me  
4 out when I needed help.  
5 Q. Is she -- and you know that she's a  
6 plaintiff in this case, correct?  
7 A. Yes.  
8 Q. Do you have a recollection of your  
9 relationship with her, as far as, like, managing or  
10 supervising, supervising you? I guess, more  
11 specifically, did she sort of correct you and coach  
12 you along? Is that kind of what you're getting at?  
13 A. Yes, yes, yes. Like, basically, when I had  
14 a question that needed to be answered and nobody was  
15 around, I was able to go to her, and she was -- she  
16 was there to help.  
17 Q. Did she -- more so than other supervisors,  
18 or --  
19 A. At the time I was new, so I really kind of  
20 like stuck to the people I was more comfortable with,  
21 so yes. At that time, yes.  
22 Q. Okay.  
23 A. She was probably the only one.  
24 Q. Was she ever involved in, like, correction  
25 or discipline for you?

1 A. No, not at all.  
2 Q. Was that because she was not your  
3 supervisor later on, or --  
4 A. Right, right.  
5 Q. And who else did you say was the other  
6 supervisor?  
7 A. Celia. Celia Loveland was the one that was  
8 my supervisor before I left.  
9 Q. Was she often involved in, you know,  
10 correction --  
11 A. Oh, yes.  
12 Q. -- and discipline, that sort of thing?  
13 A. Yes.  
14 Q. Was she in the same rank, basically, as  
15 Antoinette?  
16 A. Yes.  
17 Q. Okay. The same position?  
18 A. Yes.  
19 Q. Was Antoinette or Celia ever involved in,  
20 like, guidance or appraisals, that sort of thing, as  
21 far as --  
22 A. We had -- Celia is -- she's probably -- she  
23 was my supervisor the past few months before I --  
24 yeah, the past months -- I should say the past few  
25 months before I had left. But Antoinette was never

1 part of that.  
2 Q. Okay.  
3 A. She left really soon after -- it seems like  
4 she left right after I came, not too long after, and  
5 we were on different shifts. So Celia is probably  
6 the most, out of all of them.  
7 Q. Did she ever do reviews and things of your  
8 work?  
9 A. Celia?  
10 Q. Uh-huh.  
11 A. Yes, she did.  
12 Q. Do you remember if she signed them? I've  
13 got a bunch of documents here, and I just don't  
14 remember whose signature is on them.  
15 A. Yeah, I'm pretty sure she signed hers.  
16 Q. Do you think, looking back on your time  
17 with 311, that it was principally Celia that was the  
18 supervisor or anyone else?  
19 A. I was there for two years, and it change  
20 periodically. So I would have to say that she was  
21 the most influential person there. But it changed  
22 all the time, so I can't really say.  
23 Q. You may or may not know, but Ed Adams, the  
24 former CAO of the City of Albuquerque, is also named  
25 in the lawsuit. Just for the record, for the

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1 Q. Okay.  
2 MR. LIVINGSTON: Well, let me make a  
3 further objection.  
4 MR. GARCIA: Okay.  
5 MR. LIVINGSTON: You have these documents.  
6 What is the point of asking her if she sees that?  
7 MR. GARCIA: Well --  
8 MR. LIVINGSTON: And what is the point of  
9 getting her to go back to 2007 and confirm that this  
10 is a document that she got, especially if it has her  
11 signature on it?  
12 MR. GARCIA: Well, we can do it simpler,  
13 and, that way, you can get out for your appointment.  
14 Q. Would you do me a favor, Ms. Waites, and  
15 just look through that whole package and just see if  
16 that's you? If it's somebody else, then we'll take  
17 those out.  
18 MR. GARCIA: I'm all for simplifying, if we  
19 can do it.  
20 MR. LIVINGSTON: Well, here's a page -- oh,  
21 yeah. Okay. It's Keri. Okay.  
22 I'm glad you decided to do it this way.  
23 THE WITNESS: That sounds good.  
24 MR. LIVINGSTON: We would have been here  
25 late into the night if --

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1 MR. GARCIA: I just figure, it's easier on  
2 you, and it's easier on me, too.  
3 MR. LIVINGSTON: Yeah, right.  
4 A. Yep, this is all me.  
5 Q. Okay. The last page slid out.  
6 MR. LIVINGSTON: Oh, no.  
7 Q. The top page has slid out.  
8 MR. LIVINGSTON: Don't panic yet.  
9 A. Okay. All right.  
10 Q. Just a couple of questions on this. Could  
11 you go three pages backwards from the end --  
12 A. Three pages backwards?  
13 Q. Yeah, start from the end and go three  
14 pages.  
15 A. Right.  
16 Q. And this is -- I guess it was -- a Final  
17 Written was delivered to you on 12/29?  
18 A. Right.  
19 Well, I thought the -- I thought it was a  
20 Written one. That's what I was trying to look at,  
21 because I didn't know it was a Final Written.  
22 Q. Okay. Look at the bottom down there, where  
23 it says -- an entry, 12/29/09?  
24 MS. TENENBAUM: On this one.  
25 Q. Oh, I'm sorry, on the page just previous to

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1 the third one. Here, I can help you.  
2 A. This one, right?  
3 Q. No, I think it's this one. Sorry about  
4 that.  
5 A. No, you're fine.  
6 Q. This little entry down at the bottom, it  
7 says, "A 'Final Written' was delivered. Keri should  
8 have no further incidents within next 90 days or she  
9 may be terminated."  
10 A. I see that.  
11 Q. You see it?  
12 A. Yeah.  
13 Q. Do you know what that was about? Was it  
14 performance, generally, or tardiness?  
15 A. It was due to the weather. I couldn't get  
16 here on time, and I was five minutes late, and there  
17 was nothing that anybody could do for me.  
18 Q. Was it like your first tardy, or were there  
19 a few other tardies?  
20 A. Like, as if you see in the first, what,  
21 month of the job, I was two minutes late, but you  
22 can't be consistently late, and that's probably what  
23 this -- like, the second thing in two years.  
24 Q. How come, on the next page, you refused to  
25 sign? Was there a reason?

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1 A. Because it was due to weather. I mean, I  
2 totally can't change the weather. I know I should  
3 have left maybe an hour earlier, but I just felt that  
4 it wasn't justified. I mean, I just -- in my heart,  
5 I just couldn't take that. I couldn't accept that,  
6 at all.  
7 Q. Do you remember how many hours you used to  
8 work per week?  
9 A. Forty.  
10 Q. Forty? And that was consistent?  
11 A. Yes, consistent.  
12 Q. You never took any work home, right, for --  
13 A. No, sir.  
14 MR. GARCIA: I mean in the literal sense,  
15 not figuratively.  
16 MR. LIVINGSTON: Oh, okay. I guess that  
17 would be one way to save money.  
18 Q. Let me just check through a few things and  
19 make sure I'm not missing anything. Believe it or  
20 not, this actually speeds things up.  
21 After the incident with APD on New Year's  
22 Eve, did you talk to anybody else at work after that  
23 happened about the incident?  
24 A. The only person that I spoke to was  
25 probably Renee Garcia, because she was actually going

1 to be picking us up that night. And she was just a  
2 co-worker there. She was just -- you know, she was  
3 just an agent on the phone.  
4 Q. Uh-huh.  
5 A. That was it.  
6 Q. Now, just so I'm clear, I was talking about  
7 after the incident. Did you -- she's the one that  
8 you talked to?  
9 A. Well, I mean, it was -- when I went to  
10 work, she had asked if I made it home okay.  
11 Q. Oh.  
12 A. And I kind of explained my stress at this  
13 moment.  
14 Q. What was your stress?  
15 A. I did not want to lose my job. I just --  
16 that's not my character. That whole incident was not  
17 my character. "I can't lose my job," you know,  
18 that's what I felt at that moment.  
19 Q. So did you express to her your concern that  
20 you might lose your job?  
21 A. Yeah, I probably did. You know, I don't  
22 remember word for word, but I was really stressed  
23 that -- that that had happened, and it was just a  
24 bad, bad incident.  
25 Q. Did you kind of then have an idea that that

1 is why you got fired?  
2 A. After a while, I did. I really didn't  
3 think that anything would have come of it if -- you  
4 know, I could see something coming of it if I was  
5 convicted, but since it was -- I wasn't, I honestly  
6 just was hoping that it would go away, that it  
7 wouldn't happen, that it wouldn't have happened.  
8 Q. Okay.  
9 A. I didn't think I was going to get fired.  
10 Q. And who did you say you talked to?  
11 A. Her name was Renee.  
12 Q. Garcia?  
13 A. Garcia, yes.  
14 Q. Who else have you talked to about the  
15 lawsuit?  
16 A. Nobody, really. Actually, just --  
17 Q. Other than your attorney.  
18 A. Livingston, and I had a conversation -- I  
19 bumped into Nicole Bordlemay once, and she had -- she  
20 had told me that, you know, there was hearings going  
21 on.  
22 She wasn't -- she wasn't clear, as far as,  
23 like, where they are or -- but they -- that was  
24 pretty much it.  
25 Q. Antoinette Gonzales or --

1 A. Actually, I have not talked to her.  
2 Q. Okay.  
3 A. I haven't talked to her in a while.  
4 Q. Did you know her from before working for  
5 the City, or --  
6 A. No, no.  
7 Q. Any other plaintiffs in this case --  
8 A. No.  
9 Q. -- did you know before working for the  
10 City?  
11 A. No, not at all.  
12 Q. What did Nicole say to you about the case?  
13 A. Just that she -- I had told her my  
14 situation, and she felt that -- maybe that, you know,  
15 "Somebody who knows the law might want to listen to  
16 your situation and see where to go from there." She  
17 was actually the one that gave me Mr. Livingston's  
18 number, and we just took it from there.  
19 Q. Well, obviously, you've joined the case.  
20 What is it that you hope to get out of the case?  
21 A. You know, honestly, I just want a better  
22 look for 311, because it's a really scary  
23 environment; and if we're supposed to be helping our  
24 citizens, then I think the employees should be  
25 comfortable, not so stressed behind the scenes.

1 I would love to have my job back. I would  
2 love to, because I love helping people. I really  
3 enjoyed it. There was some moments, you know, you  
4 kind of get irritated, but I loved my job. So, out  
5 of all of this, I really hope they have a better  
6 procedure, a better policy, of how things are ran.  
7 Q. So are you saying that you want your job  
8 back out of the lawsuit?  
9 A. I would love my job back.  
10 Q. Okay.  
11 A. I would love anything positive to come out  
12 of this, because it's a really bad situation.  
13 Q. Okay. Would you please sort of amplify on  
14 that a little bit? What is it that you find so bad  
15 about the 311 Center and, at the same time, you also  
16 would like to go back and work there?  
17 A. I guess, from my experience with some of  
18 the calls, I really -- you could really tell how  
19 frustrated the citizen was, and I'm the type of  
20 person who really wants to make sure that they're  
21 okay.  
22 So I would make sure that I would go a  
23 little bit above and beyond to help them. I  
24 understand the policies and procedures, as far as,  
25 like, what we're not supposed to -- what you

1 have no further incidents within 90 days on  
2 January 5th, on January 1st, it says -- just explain,  
3 if you can, what you understand this to mean,  
4 "December 2009 Ticket Variance was minus 1.05, which  
5 does not meet the KPI for Ticket Variance. Keri will  
6 be issued a 'Final Written Addendum.'"  
7 A. It looks to me like they were looking for  
8 something else to -- to -- just to -- just to look  
9 at, just to hold onto, just to add to their case of  
10 firing or letting go.  
11 I never saw that. Actually, on the 1st,  
12 that was my day off. The 1st and the 2nd was when I  
13 was actually off of work. New Year's Eve was my last  
14 day of work. So I don't remember that at all.  
15 Q. Okay.  
16 A. I never saw that.  
17 Q. So you --  
18 A. So the last thing that I know of is me  
19 refusing to sign that, that warning on the 20- --  
20 Q. So, as far as you know, on the 23rd, right  
21 before Christmas, there was a progression to a Final  
22 Written?  
23 A. Right. That one makes more sense than the  
24 other one.  
25 Q. Okay.

1 A. Yes, on the 20- -- that's when I was  
2 actually written up, on the 23rd, yes.  
3 Q. So, as far as you know, this just doesn't  
4 make any sense?  
5 A. Yeah, that has --  
6 Q. Okay.  
7 A. I don't know about it.  
8 Q. Now, Mr. Garcia asked if anyone -- when he  
9 started, he asked if anyone told you that you  
10 couldn't be fired for any reason at all, and I'm  
11 going to ask you: Did anyone tell you that you could  
12 be fired for no reason at all?  
13 A. You know, pretty much the way it was  
14 thought, out at 311, is you basically walk the wrong  
15 way, they have -- they can do whatever they want to  
16 you. You don't -- you don't have to do anything and,  
17 pretty much, your services are no longer needed, if  
18 that's how they feel.  
19 Q. Is "they" basically Esther --  
20 A. I would have to say --  
21 Q. -- Lisa, and Charles?  
22 A. -- Esther. Esther is the main person who  
23 is in charge of that. So, yes, I would have to say  
24 that Esther would be making that decision.  
25 Q. When you were told that you're not part of

1 the union so you don't get those benefits or when you  
2 got that understanding --  
3 A. Yes.  
4 Q. -- what benefits were you actually talking  
5 about that you didn't think you got?  
6 A. You know what? To tell you the truth, the  
7 only thing that I looked at in that situation was, if  
8 I was fired, that I wouldn't be able to do anything  
9 about it. It's just -- it is what it is, versus  
10 union, where they actually would probably fight for  
11 you to keep your job.  
12 Q. So you weren't talking about pensions or --  
13 A. No.  
14 Q. -- or health-care or anything --  
15 A. No.  
16 Q. -- insurance, anything like that?  
17 A. No, not like that at all.  
18 Q. Okay. And --  
19 A. That was pretty much my concern.  
20 Q. Do you know if the others at 311 shared  
21 your understanding that they could be fired anytime  
22 Esther wanted to fire them?  
23 A. Has anybody ever talked to me about that?  
24 Q. Well, tell me if you talked about that and  
25 if you know about that.

1 A. Oh, I -- everybody is scared of Esther.  
2 Everybody is afraid that you're going to  
3 fire somebody, you know, just by not smiling at them  
4 when they walk past. I'm pretty sure I've had that  
5 conversation with everybody in the call center.  
6 Q. Did anyone explain to you ever why, other  
7 than this union or nonunion issue, the employees of  
8 the City who worked at the call center would be  
9 different from all the other employees --  
10 A. No.  
11 Q. -- of the City?  
12 A. No.  
13 Q. Okay.  
14 A. I mean, they made it sound so good in the  
15 orientation that we were union that I -- you -- in --  
16 I just totally thought that we were all part of the  
17 same organization. I really didn't understand us not  
18 being union.  
19 Q. Okay. I'm not sure I understood what you  
20 said.  
21 A. I guess, basically --  
22 Q. They talked about the union in the  
23 orientation?  
24 A. Yeah. You know how they tell you the  
25 benefits you have, and one thing they went off of,