

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 NICOLE BORDLEMAY
19 January 13, 2010
20 3:05 P.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: EDWARD W. BERGMANN, ESQ.
 ATTORNEY FOR DEFENDANTS

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

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1 APPEARANCES

2

3 For the Plaintiffs:

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6

7 For the Defendants:

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11

12 CITY OF ALBUQUERQUE
City Attorney's Office
P.O. Box 2248
13 Albuquerque, New Mexico 87103
BY: MR. MICHAEL I. GARCIA

14

15 Also Present:

16 Ms. Esther Tenenbaum

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1 NICOLE BORDLEMAY,
2 having been first duly sworn, testified as follows:
3 EXAMINATION

4 BY MR. BERGMANN:

5 Q. This is the deposition in the case of Gonzales
6 versus City of Albuquerque. I'm going to ask you a
7 series of questions. If, at any time, you don't
8 understand the question I've asked you, let me know,
9 we'll start again, do it -- do it over.

10 A. Okay.

11 Q. If you answer a question I've posed to you,
12 I'll assume that you understood the question and that
13 your answer indicates that understanding.

14 A. Okay.

15 Q. Okay? If, at any time, you want to take a
16 break, let me know.

17 A. Okay.

18 Q. Would you state your name --
19 MS. TENENBAUM: (Indicating.)
20 MR. BERGMANN: Oh.

21 Q. State your name for the record.
22 MR. LIVINGSTON: We've done it enough.
23 MS. TENENBAUM: Oh.

24 A. Okay. Nicole Bordlemay.
25 MR. BERGMANN: The official record of

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9 EXHIBITS FORMALLY MARKED/IDENTIFIED PAGE

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11 1 - 12/2/09 E-Mail to the Berry Transition Team from Nicole Bordlemay 11

12 2 - New Hire Personnel Action for Nicole M. Bordlemay, Effective 12/24/05 12

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14 3 - 12/27/05 Employment Information Form (P2) 14

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16 4 - 12/9/05 Recommendation for Hire/Promotion Form 15

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1 this deposition is the transcript taken by the court
2 reporter.

3 Q. (By Mr. Bergmann) Where are you currently
4 employed?

5 A. I'm not.
6 (Cell phone rings.)
7 MR. LIVINGSTON: My phone sometimes
8 starts doing that, and I don't know why.

9 Q. When did you last work at City of Albuquerque?
10 A. That would be November 19th.

11 Q. Of --
12 A. '09, yeah.

13 Q. -- last year?
14 A. Sorry.

15 Q. Now, coming to -- prior to coming to the
16 deposition, did you talk to anyone other than your
17 attorney about your deposition?

18 A. No.

19 Q. Have you talked to anyone other than your
20 attorney about this case?

21 A. Yes.

22 Q. All right. And --
23 A. The people in this case.
24 Q. Right. That could include people in this
25 case. Who have you talked to about this case?

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1 A. Antoinette.
 2 Q. All right. Antoinette Gonzales?
 3 A. Gonzales.
 4 Q. All right.
 5 A. Sarah Clover, Caroll Austin, and Nicole
 6 Foster.
 7 Q. Would you tell me what you've talked to
 8 Antoinette Gonzales about in terms of this case.
 9 A. What do you mean? What we said?
 10 Q. Yes, exactly. What you said, what she said.
 11 A. Oh, wow. Verbatim, I don't know. I mean, I
 12 have spoken to her --
 13 Q. As -- as nearly as you can recall.
 14 A. Okay. Well, when I first spoke to her, I --
 15 it was right after I got fired, and she was -- told me
 16 about -- what the case was about and told me if I wanted
 17 to, I could call Paul. Nicole Foster, Caroll, and Sarah
 18 Clover was yesterday that I spoke to them, and we spoke
 19 about Esther's deposition.
 20 MR. LIVINGSTON: Wait a minute. If you
 21 spoke when I was there --
 22 THE WITNESS: Yeah.
 23 MR. LIVINGSTON: -- don't tell him.
 24 THE WITNESS: Oh, sorry.
 25 Q. Right. I -- I -- This is limited to

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1 conversations outside of the presence of Mr. Livingston.
 2 A. Oh. No, those were yesterday, just outside,
 3 with Paul.
 4 Q. Okay. Now, what -- in terms of explaining the
 5 case, what did Antoinette Gonzales tell you about the
 6 case?
 7 A. Well, she sent me a copy of the -- the case.
 8 Q. The Complaint.
 9 A. Yes.
 10 Q. Okay.
 11 A. And said that Paul was willing to speak with
 12 me; if I had any other questions, just to call him. And
 13 I did.
 14 Q. So you have read the Complaint in this case.
 15 A. Yeah, I have.
 16 Q. Now, let me ask you, in terms of this case,
 17 what is it specifically that you're asking for?
 18 A. Well, I don't believe that I was justly let
 19 go. Being an at-will employee, I -- I understand you
 20 can be fired for not doing your job or -- you know,
 21 standard reasons for being fired. But the fact that I'm
 22 being fired as a -- an at-will employee, and I attempted
 23 to make an appeal to HR and to the mayor, and I'm being
 24 denied, being told I'm an at-will employee, that makes
 25 me part of -- of this case.

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1 Q. So you're -- you're in the case or going to be
 2 in the case to protest your termination.
 3 A. Yes, absolutely.
 4 Q. What specific relief or -- are you looking
 5 for?
 6 A. I don't know that I have any specific relief.
 7 Q. Well, let me just ask you. Are you looking to
 8 get your job back, for example?
 9 A. I would take my job back. In fact, I wrote a
 10 letter to the mayor about -- I don't know. I wrote it
 11 on the 13th of December, and my suggestion was that if
 12 the center could be realigned under new management that
 13 I felt comfortable with, I would be happy to accept my
 14 job back. I -- I liked my job. Otherwise, I thought it
 15 appropriate that I could be given a different position
 16 within the City.
 17 Q. Okay. So you would not return to the 311
 18 Citizen Contact Center under the current management
 19 that's present.
 20 A. No.
 21 Q. So if that management stayed, you wouldn't
 22 return.
 23 A. No.
 24 Q. "No" meaning you wouldn't return.
 25 A. Correct.

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1 Q. Okay. Fine. And you -- you said you'd be
 2 willing to take a different position with the City.
 3 A. Sure.
 4 Q. Any idea of what position you might be
 5 interested in or that you would be qualified for?
 6 A. Well, I had applied for a police records job.
 7 I had also applied for several administrative assistant
 8 jobs. Those would all be clerical. I'm qualified for
 9 all of those. I applied for about -- I would guess
 10 about seven to ten jobs, I don't know, I guess within
 11 the last year or so, and last I had checked with HR, I
 12 spoke with Ellen, and she said that I was originally
 13 qualified for all of the positions, but she couldn't
 14 tell me -- you know, they -- the supervisors then, after
 15 you're prequalified, decide if they're gonna call you or
 16 if they don't, and nobody ever did, so --
 17 Q. Is it fair to say that your claims against the
 18 City start with the -- essentially the day you were
 19 terminated?
 20 A. Yeah, I guess that's safe to say.
 21 Q. Apart from the fact that you disagree with
 22 your termination, is there anything else that the City
 23 has done toward you that you disagree with?
 24 A. To date, I don't believe so.
 25 Q. Do you have any documents that you've brought

1 A. I believe he was a Contact Agent II.
2 Q. Oh, at the call center.
3 A. Yeah.
4 Q. Oh, okay. I'll take that.
5 MS. TENENBAUM: And that one, too.
6 Q. Oh, okay. I'll take the -- that, too. Sorry.
7 A. Oh, sure.
8 Q. So I can keep track of the exhibits.
9 (Exhibit 3 was marked for identification.)
10 Q. Okay. I show you a document I have marked as
11 Exhibit 3 to your deposition, and I ask you, is that
12 your signature at the bottom?
13 A. Yeah. Yes, it is.
14 Q. Okay. And did you read this document before
15 you signed it?
16 A. Probably not.
17 Q. So --
18 A. But, yes, I did sign it.
19 Q. You did sign it --
20 A. Sure.
21 Q. -- but you didn't -- you don't think you read
22 the document.
23 A. Well, I don't know. I guess I did. I mean, I
24 know my pay rate is 16.34. That's probably what I
25 looked at. But everything on here, I don't have a

1 Sorry.
2 Q. All right. Your best recollection, though, is
3 it may have been Celia Loveland.
4 A. Yes, that's my first thought.
5 Q. Okay. Now, it says at the bottom,
6 "Justification: Applicant has 7 years 9 months
7 experience." Where was that experience?
8 A. I worked at AOL for six years, and then after
9 that I worked at United Healthcare and T-Mobile.
10 Q. Okay. And was that -- Were -- were those in
11 Albuquerque?
12 A. Yeah.
13 Q. Okay.
14 A. Yeah, I believe they're probably just talking
15 about call center experience.
16 Q. Ex- -- I would assume so. And you started out
17 as a Citizen Contact Agent II.
18 A. Yes.
19 Q. And that was because of your prior experience.
20 A. (Nods head.)
21 Q. Now, did you undergo any training when you
22 started?
23 A. Yeah, we had a six-week, maybe, training
24 class.
25 Q. And who conducted the training?

1 problem with it. I mean --
2 Q. It says "Employment Status: Unclassified."
3 Did you notice that at the time?
4 A. Apparently not. I didn't see it now. But
5 even now, if I had seen it then, I didn't know what
6 unclassified meant. That's the whole dispute here.
7 Q. I understand. Did you ask anyone about what
8 the term "Unclassified" meant?
9 A. No.
10 (Exhibit 4 was marked for identification.)
11 Q. Let me show you a document that's been marked
12 as Exhibit 4 to your deposition. It's a -- and it's
13 dated December 13th, 2005. Well, it's got two different
14 dates. One is December 9th, and there's another date of
15 December 13th, received. It refers to you as the
16 selected applicant. It has your hourly rate. Was your
17 immediate supervisor Michael Padilla?
18 A. Well, he was the director.
19 Q. Okay. Who was your immediate supervisor?
20 A. When I first started?
21 Q. Yeah.
22 A. Let me just think for a minute. Well, let's
23 see. Training was Esther. And then after Esther would
24 be -- I don't know. I don't know. Maybe Celia Love- --
25 Loveland. I can't tell you who my first one was.

1 A. Esther.
2 Q. Okay. Did anyone else participate in the --
3 in conducting training besides Esther Tenenbaum?
4 A. Michael Padilla.
5 Q. And did Michael Padilla, at any time, speak
6 about unclassified status and what it meant?
7 A. No. Michael's role in the training was -- his
8 mission statement, if you will -- he had us think of a
9 mission statement. You know, how he wanted us to -- to
10 act for the City and treat the citizens. And then he
11 went over the Government part of it, to explain how the
12 City Government works. And then Esther trained us on
13 the job.
14 Q. Did you ever hear about the topic of unions
15 and being unclassified?
16 A. Not until about a year or two after I worked
17 there. And then it was just a rumor on the floor, that
18 the union wanted to come in and -- That's all that I
19 know about it. I -- I don't really know much about
20 unions.
21 Q. Did -- Was there any mention of unions and
22 unclassified status in terms of the rumor or anything
23 else?
24 A. Yeah. Well, when they were talking about the
25 union coming in, it's then that I realized, anyways,

1 supervisor signs it, the monthly scorecard?
2 A. Yeah. Usually when they get it, it's signed
3 by Esther and Lisa Martin. They've reviewed it with my
4 supervisor already, and then she signs it and I sign it.
5 Q. Do you remember having a meeting with Charles
6 Cowen and Celia Loveland in July of 2008?
7 A. Maybe. What was it about?
8 Q. Well, it was a -- a -- there was a
9 disciplinary warning issued.
10 A. Yes, I recall.
11 Q. Okay. You recall that one?
12 A. Uh-huh.
13 Q. What do you recall about that meeting?
14 A. I got a call from a citizen who wanted to
15 report some dogs dropped off. And I believe this is the
16 incident, the only one I can think of. And she wanted
17 us to investigate based on a license plate. And so I
18 sent it, at the same time, to the supervisor on duty,
19 which was Carol McCoy, and she advised me we don't do
20 investigations off the license plate. So I told the
21 citizen that. And then they called me into Lisa
22 Garcia's office. She was the quality coordinator. And
23 she told me that they were going to terminate me because
24 of it.
25 And I told her my side of the story, that

1 Carol told me this was the correct information. And
2 then I did go into Esther's office, and I talked to
3 Esther. I was upset that I was being threatened to be
4 fired. And then Charles and Celia took me in the office
5 and said they were going to put me on a final for it,
6 which I refused to sign because I didn't agree with it.
7 Carol's the one -- the supervisor who said the
8 information was correct. And that's what I gave. So it
9 was still in my file, but I refused to sign it.
10 Q. Do you recall a conversation with Esther
11 Tenenbaum immediately prior to your termination?
12 A. Yeah.
13 Q. Could you tell me what went on in that
14 conversation?
15 A. Sure. Let's see. Well, I was called into the
16 conference room, and Esther and Betty were in there, and
17 the --
18 Q. For the record, what's Betty's last name.
19 A. Oh, I'm sorry. Betty Dinelli.
20 Q. And what's her position? I'm sorry to
21 interrupt you, but just for the record.
22 A. That's okay. She's the administrative
23 assistant for 311.
24 Q. Okay. Go ahead.
25 A. And so the first thing Esther told me, that

1 she had already gotten approved through Legal to
2 terminate me. And then she started telling me about a
3 call I received. The first one was a citizen who wanted
4 to speak to someone about some items she lost when she
5 was arrested. And I told the citizen she needed to
6 speak with the jail who would handle her items. I
7 didn't have a number to police property.
8 She wanted to be transferred to the police
9 academy.
10 I told her the police academy can't help
11 her with lost items from the jail. She refused to call
12 the jail because they have too many menus. And I
13 refused to transfer her because the police academy
14 doesn't handle that. And my thought was they were going
15 to send it right back.
16 And that's what I told Esther. I thought
17 I handled it appropriately. The citizen did call me
18 Hitler and hung up on me. I never said that I did
19 anything wrong. I did tell Esther that the calls were
20 bad calls. I mean, I -- What more can I say? I'm being
21 called in the office. Of course they're bad.
22 And then we discussed a second call, which
23 was a gentleman who called in and said, "I want to speak
24 to Planning."
25 And I said, "Okay, sir. I can help you

1 with that. Which area of Planning would you like to
2 speak with?"
3 He said, "I don't know. I'll call back."
4 And I said, "Okay." And that was the end
5 of that call.
6 I did get him back later in the day, and
7 he knew he wanted to speak to Plan Check, and so I
8 transferred him to the zoning counter.
9 And so my dispute to Esther was I didn't
10 think I handled the calls wrong. I did say that, you
11 know, I'd been handling the calls the same way for four
12 years, like I'd been trained. You send them to the
13 right office. I mean, citizens call in, and they don't
14 always know where they want, so my job is to direct them
15 to the right place.
16 And Esther said, well, if that's the way
17 I'm handling my calls, then I'm not going to be able to
18 work here. And she asked me if I wanted my job, if I
19 wanted to work here.
20 And I said I did. I mean, I -- I told
21 her, "I have a son. Of course I need a job." And asked
22 her what else she wanted me to say. And that was it.
23 And then she said my services were no longer needed.
24 Q. After that, did you have a conversation with
25 Charles Cowen?