

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 NICOLE FOSTER
15 Wednesday, January 13th, 2010
16 9:35 a.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. EDWARD W. BERGMANN
23 ATTORNEY FOR THE DEFENDANTS

24 REPORTED BY: MICHELE M. TRUJILLO, CCR No. 226
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1 APPEARANCES

2 For the Plaintiffs:

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7 For the Defendants:

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13 MR. MICHAEL I. GARCIA
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18 Also Present:

19 Ms. Esther Tenenbaum

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10 * * * * *

1 NICOLE FOSTER

2 after having been first duly sworn, testified
3 as follows:

4 MR. BERGMANN: This is a discovery
5 deposition in the case of Gonzales, et al., versus
6 the City of Albuquerque.

7 EXAMINATION

8 BY MR. BERGMANN:

9 Q. Would you state and spell your name for the
10 record, please?

11 A. Nicole Lynn Foster, N-i-c-o-l-e L-y-n-n
12 Foster, F-o-s-t-e-r.

13 Q. Do you live --

14 MR. BERGMANN: You're trying to get your
15 recorder started, but --

16 MR. LIVINGSTON: I've got it started.

17 MR. BERGMANN: Okay. But the official
18 transcript of this deposition will be the transcript
19 of the court reporter.

20 MR. LIVINGSTON: That is understood.

21 Q. I'm going to ask you a series of questions
22 in this deposition. If at any time you don't
23 understand a question, let me know. We'll rephrase
24 it and start over again. However, if you answer one
25 of my questions, I will assume that you understood

1 the question and that your answer indicates that
2 understanding.

3 A. Okay.

4 Q. Okay?

5 If you need a break, let me know. We'll
6 take a break.

7 Where are you currently employed?

8 A. I am not currently employed.

9 Q. When was your last day of employment at the
10 City of Albuquerque?

11 A. October 19th, 2009.

12 Q. In what capacity were you employed by the
13 City of Albuquerque?

14 A. I was -- I don't understand that question.

15 Sorry.

16 Q. What was your job at the City of
17 Albuquerque?

18 A. Agent II, at the 311 Citizen Contact
19 Center.

20 Q. How long had you worked at the City of
21 Albuquerque?

22 A. Four-and-a-half years.

23 Q. Let me ask you a couple of questions.

24 Prior to coming here to your deposition, did you talk
25 to anyone about the deposition, other than your

1 Q. How did you learn about the position with
2 the City?
3 A. A few people where I was working before,
4 which was Citibank, were applying for the position,
5 and I decided something new would be fun, and the
6 City would be a great place to work and learn and
7 experience.
8 Q. Was the Citibank facility you were working
9 at -- was that a call center, too?
10 A. Yes, sir.
11 Q. How long did you work at Citibank?
12 A. Six years.
13 Q. Did you work at a call center before
14 Citibank, or was Citibank the first call center you
15 worked at?
16 A. Citibank was the first call center.
17 Q. Now, on Foster Exhibit 1, it has "Remarks:
18 "Unclassified Hire," and it says, "From
19 Advertisement." Did you -- were you aware that there
20 was an advertisement for employees?
21 A. Yes.
22 Q. And were you aware that your status was
23 unclassified?
24 A. Not until the first day of training.
25 (Foster Exhibit 2 marked.)

1 Q. I show you a document which has been marked
2 as Foster Exhibit 2, which is an Employment
3 Information Form, P-2. It has a date. At the top,
4 it has a date of June 8th, 2005. Is that your
5 signature on the bottom?
6 A. Yes, sir.
7 Q. Did you read this document before you
8 signed it?
9 A. Yes, sir, I would have, I believe.
10 Q. And did you understand the document that
11 you read?
12 A. Yes, sir. From what I -- I didn't think to
13 ask what "UN" meant, as "Job Grade."
14 Q. Well, it says, "Employment Status."
15 MR. LIVINGSTON: Excuse me. I don't think
16 Nicole understands that she's supposed to testify
17 from her memory. She said, "I think I would have
18 read it," for example, and so I think we need to
19 explain to her that she needs to testify as to what
20 she remembers actually doing.
21 MR. BERGMANN: All right. So put.
22 Q. You're to testify about your memory, what
23 you can remember on this. However, if you can't
24 remember, you can indicate what your normal practice
25 would be.

1 Now, in the document, which you read, it
2 says, under "Employment Status: Unclassified."
3 A. Yes, sir.
4 Q. And you did read the document?
5 A. I believe so, yes.
6 Q. Did you ask anyone what the statement
7 "unclassified" meant?
8 A. No.
9 We went over what "unclassified" meant in
10 training, with Michael Padilla.
11 Q. Okay. And what did Mr. Padilla tell you
12 about "unclassified" in training?
13 A. That we would have -- we would never have
14 union, that we were unclassified because of pay
15 rates, that he worked it out with the mayor, which
16 would have been Mayor Chavez at the time, that we
17 would -- that's why we had such a high rate of pay,
18 is because of the unclassified.
19 If we would have been union, we wouldn't
20 have gotten the pay that we did.
21 Q. Do you recall him saying anything else?
22 A. No, sir.
23 Q. And was that training at the beginning of
24 your employment?
25 A. Yes, it was the first day.

1 Q. How long did that training last?
2 A. Maybe four weeks, I re- -- if I recall
3 correctly.
4 It might have been two. I don't know. We
5 were rushed, because we were the first class at the
6 starting of the opening, the grand opening, of 311.
7 So we were kind of a rush class.
8 (Foster Exhibit 3 marked.)
9 Q. I show you a document which has been marked
10 Foster Exhibit 3 and has a date stamp on it of
11 June 6th, 2005, and it also has -- among other
12 things, has an hourly rate. Do you -- was that the
13 hourly rate that you were hired at?
14 A. Yes, sir, I believe so.
15 Q. And it says, "Immediate Supervisor:
16 Michael Padilla." Was he your immediate supervisor?
17 A. At the time of hire, yes, sir.
18 Q. And it -- the work location is the Plaza
19 del Sol building, 6th Floor. Is that where you were
20 working?
21 A. Yes, sir, it was.
22 Q. And that's also known as the Pyramid
23 Building?
24 A. Yes, sir.
25 Q. Do you recall, did you report to work on a

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1 Padilla's.
2 Q. Was there any --
3 A. But I believe we had a first interview and
4 then Michael, just like normal hiring.
5 Q. And the first interview, was that by
6 supervisors, if you can recall?
7 A. I do not recall who my first interview was
8 with. I don't recall if I even had a first
9 interview. I'm just going by what is norm- -- on --
10 the norm.
11 Q. So the first interview -- the second
12 interview, you know, was conducted by Michael
13 Padilla.
14 A. Yes, sir.
15 Q. The first interview was conducted by
16 persons other than him, I assume?
17 A. If I even had a first interview. I don't
18 recall if I even had a first interview.
19 Q. Do you remember what year that was in?
20 A. I have no idea.
21 Q. Do you remember who your supervisors were
22 when you were a -- you know, at the 311 Citizen
23 Contact Center?
24 A. I have had Lisa Raymond as a supervisor.
25 I've had Annette -- I mean, Antoinette Gonzales. I

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1 have had Carol McCoy. I've had David. I have had J.
2 Michael Barnes. That would be David Chavez. I
3 apologize.
4 I don't re- -- those are the only ones that
5 I can recall, off the top of my head.
6 Q. Now, your different supervisors, was that
7 because you were working different shifts?
8 A. It was, usually. We had a shift bid, and
9 whatever bid fell under that shift bid or that shift
10 that you were on was our supervisor for that shift.
11 Q. So the different supervisors you had
12 related to the different shifts?
13 A. Correct.
14 Q. And if you bid on a different shift, you
15 might get a different supervisor?
16 A. Correct.
17 Q. And were the supervisors -- they were the
18 ones who sat on the bridge?
19 A. Yes, sir.
20 Q. Now, you said that you went to Esther
21 Tenenbaum about issues or concerns. Did you ever go
22 to a supervisor about an issue or a concern?
23 A. Uh-huh. Yes, sir.
24 Q. And could you give me a couple of examples
25 of that? If you can recall.

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1 A. One I can recall -- or several I can recall
2 is about monitor scores. Why -- if it was my acting
3 supervisor that scored me and I was -- if I felt that
4 I did do what they said I didn't -- or I didn't do
5 what they said I did, whichever way it worked for me,
6 I would go and ask either to listen to it or if I
7 could re-listen to it, if I wasn't clear on if I
8 heard it the first time, or if they could explain to
9 me why they scored me a score that they did.
10 Q. And did they usually explain to you why
11 they gave you a particular score?
12 A. Oh, yes. They were very good at that.
13 MR. BERGMANN: Let me take a couple of
14 minutes.
15 (Recess taken from 10:45 a.m. to 10:48 a.m.)
16 Q. Was there an incident or a situation with a
17 chill room at any time?
18 A. Yes, sir.
19 Q. Can you explain that to me, please.
20 A. Yes, sir. I was in the chill room, because
21 it was -- the break room was hot. We had the shades
22 lowered and everything. Lisa Martin, after the fact
23 ended up putting through a service request for
24 facility maintenance to come cool down our chill --
25 our break room.

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1 So I proceeded to move into the chill room
2 to eat, and I also was making a phone call to my
3 son's doctor.
4 Q. And in terms of eating and making personal
5 calls, was the chill room a place that you --
6 A. No, sir.
7 Q. -- you could do that?
8 A. You are not allowed to do that. According
9 to policies and procedures, you are not allowed to do
10 that, but it also says that there's no disciplinary
11 action on that policy and procedure for that.
12 Q. So did anything happen as a result of that?
13 A. Lisa Martin brought me the policy and
14 procedure, a copy of the policy and procedure for the
15 children, and I then submitted an e-mail to Esther,
16 apologizing, and told her that I was very clear that
17 it wasn't allowed and it wouldn't happen again.
18 Q. So Lisa Martin brought it to you to
19 emphasize the policy with you?
20 A. Yes.
21 Q. Was there a situation with Ipod ear- -- you
22 know, ear buds or whatever they're called?
23 A. Yes.
24 Q. And what was that about?
25 A. I had my earphones in my ear. I did not

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1 have my Ipod hooked up. I showed Carol McCoy that I
2 did not have it hooked up. I just had it, because
3 there was people. I'm -- my desk at the time was at
4 the front door, where people enter and go out.

5 I was having a hard time hearing my calls,
6 because there was a lot of conversating going on at
7 the front door, and so I just put them in so I could
8 hear my callers.

9 Q. And what did Carol McCoy say to you?

10 A. She said, "Nicole, you know those aren't
11 allowed."

12 And I said, "Yes."

13 And she said, "Why do you have them?" I
14 explained it to her. Art then brought me out
15 earplugs, orange earplugs.

16 Q. When you say "Art," who's "Art," for the
17 record?

18 A. Art is our work force manager, I believe.

19 Q. Do you know -- do you know his last name?

20 A. No.

21 Q. For the record, it's Art Martinez. Does
22 that sound familiar --

23 A. Yes.

24 Q. -- to you?

25 A. Yes, that is his name.

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1 Q. That's fine. We have to do these things
2 for the record so, if somebody reads it and isn't
3 familiar with the facility, they know who it is.
4 There may be a number of Arts.

5 A. Okay.

6 MR. BERGMANN: One question I would have,
7 Paul, is: When are you going to amend the complaint
8 and add, like, Nicole Foster and these others in?

9 MR. LIVINGSTON: Well, one -- are we -- do
10 we want to discuss this on the record?

11 MR. BERGMANN: Well, I just want to know.
12 You know, I just wanted to mention it and just get
13 some idea.

14 MR. LIVINGSTON: Okay. Well, I guess I
15 have a counter question, which is: When is Esther
16 going to stop firing people?

17 MR. BERGMANN: Well, that -- that's a whole
18 different topic. I mean --

19 MR. LIVINGSTON: No, it's actually the same
20 topic, because I received a phone call, while I was
21 at the deposition, from Kari Waites, and that kind of
22 relates to whether I'm going to add her name to the
23 names or not.

24 So it's kind of a related question, but I
25 will do that as soon as I possibly can.

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1 MR. BERGMANN: Yeah, I mean, I just think
2 it's a little bit --

3 MR. LIVINGSTON: I understand. It's a
4 little difficult to take depositions of people who
5 aren't in the case.

6 MR. BERGMANN: Who aren't in the case, and
7 that's the main point of it.

8 MR. LIVINGSTON: And, on the other hand,
9 it's also unusual to not have deadlines established
10 properly by order of the Court, and we're way beyond
11 certain deadlines, and other deadlines have not been
12 extended for discovery, for example. So we need
13 to --

14 MR. GARCIA: I submitted the order, back
15 in --

16 MR. LIVINGSTON: I understand that. It was
17 submitted a couple of months ago or a month ago.

18 MR. GARCIA: Yeah, I called Kaon -- I think
19 it's Wilde now -- Judge Browning's deputy, and I
20 still haven't gotten the order back.

21 MR. LIVINGSTON: I understand, and you did
22 submit the order, and, actually, we've talked --

23 MR. BERGMANN: Exactly.

24 MR. LIVINGSTON: -- about extending those
25 further.

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1 MR. BERGMANN: Exactly.

2 MR. LIVINGSTON: So we need to get all that
3 straightened out, and I understand that.

4 MR. BERGMANN: I have no further questions.

5 MR. LIVINGSTON: I have a few questions.

6 MR. BERGMANN: Okay.

7 EXAMINATION

8 BY MR. LIVINGSTON:

9 Q. The monitor reports that were discussed
10 earlier, how did those happen to be given to the City
11 today?

12 A. They were in my folder from work that I
13 keep all of my work-related stuff in, and Esther's
14 attorney asked for my folder.

15 Q. Okay. And were those -- were those among
16 the documents you brought for the purpose of
17 producing documents as requested by the City?

18 A. No, sir.

19 Q. Okay. And I note that all of these, three
20 or four that you had in your folder, were substandard
21 monitoring reports. They were below the 85 percent.
22 Is that correct?

23 A. Yes, sir. Yes.

24 Q. Do you have others -- do you know of others
25 that were above 85 percent?

12 (Pages 42 to 45)

1 A. I, on a norm, only keep my failed calls
2 that I don't believe should have been failed calls.
3 So, yes, there are several -- hundreds. I got 100
4 Quality Champion several times in my career at 311.
5 I also got the Star Award. I don't know what it's
6 called. All-Star Award.
7 I've received several awards for how well
8 my quality was.
9 Q. Okay. So --
10 A. And, on a norm, I had a great quality.
11 Q. Okay. Is it your opinion that you were
12 terminated because of lack of quality?
13 A. No, sir.
14 MR. BERGMANN: Object to the question.
15 MR. LIVINGSTON: Okay. Why?
16 MR. BERGMANN: On foundation grounds. I
17 don't have to tell you why, but --
18 MR. LIVINGSTON: Okay. I --
19 MR. BERGMANN: I think it's an improper
20 question.
21 MR. LIVINGSTON: But she's answered.
22 MR. BERGMANN: She's answered it, of
23 course.
24 Q. And what is your opinion as to why you were
25 terminated?

1 MR. BERGMANN: Object to the question. She
2 can -- obviously, she --
3 A. Unemployment told me that I was terminated,
4 that Esther told them that I was terminated due to
5 eating in the chill room.
6 Q. Tell me how that came about, that
7 unemployment told you something like that.
8 A. They had called to tell me that Esther or
9 the City of Albuquerque was refusing my
10 unemployment -- I don't know the word they used --
11 and they let me know -- and I asked what the
12 reasoning was, and she told me that it was for me --
13 that I was fired for a reasonable reason, which was
14 eating in the chill room.
15 MR. BERGMANN: I'm going to object to that
16 on hearsay grounds, but she's answered it.
17 MR. LIVINGSTON: Okay.
18 That's all of the questions I have.
19 Thanks.
20 FURTHER EXAMINATION
21 BY MR. BERGMANN:
22 Q. The All-Star Award, who gives you that?
23 A. I believe it's Esther that gives that, or I
24 don't -- let me rephrase that. I apologize.
25 It would be -- Leisa Garcia is the one that

1 is responsible for putting the people -- getting --
2 putting the people on the awards that they should
3 have received. Esther is the one that actually
4 presents them to us.
5 Q. And do you know what goes into somebody
6 getting that award? I mean, is it recommendations,
7 or do you have --
8 A. All-Star is hitting all of your KPIs.
9 Q. And what, for the record, are KPIs?
10 A. All of the points that we're measured on.
11 MR. LIVINGSTON: Key Performance
12 Indicators?
13 Q. And that would be --
14 A. Key Performance Indicators.
15 Q. Key Performance Indicators, and would that
16 relate to scorecards?
17 A. Yes, sir.
18 Q. Okay. So the scorecards would be one
19 source of somebody getting the All-Star Award, if
20 they hit all their Key Performance Indicators, as
21 shown on scorecards?
22 A. Yes, sir.
23 MR. BERGMANN: Okay. No other questions.
24 MR. LIVINGSTON: Let me ask one question.
25

1 FURTHER EXAMINATION
2 BY MR. LIVINGSTON:
3 Q. Does the call center, the City, keep a
4 cumulative record, like a batting average, of your
5 scores so that you can know where you stand over a
6 period of years?
7 A. I do not recall that. I know that they
8 keep a batting average, as you said, for the month.
9 Q. Okay.
10 A. I don't know. I've never seen one for a
11 year, like, how I performed over each year.
12 Q. Okay. But --
13 A. I've only known of monthly.
14 Q. But do you know if the City would have
15 available all of those scores, monthly scores?
16 A. Yes, they should have all of those in my
17 file.
18 MR. LIVINGSTON: Okay. Thank you.
19 That's all.
20 FURTHER FURTHER EXAMINATION
21 BY MR. BERGMANN:
22 Q. Have you ever looked at your personnel
23 file?
24 A. No, sir, I have not.
25 Q. So you're not sure exactly what is in your